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Young Citizen's Manual

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YOUNG CITIZEN'S MANUAL;

BEING

A DIGEST OF THE LAWS OF THE STATE OF NEW-YORK AND OF THE UNITED STATES, RELATING TO CRIMES AND THEIR PUNISHMENTS, AND OF SUCH OTHER PARTS OF THE LAWS OF THE STATE OF NEW-YORK RELATING TO THE ORDINARY BUSINESS OF SOCIAL LIFE AS ARE MOST NECESSARY TO BE GENERALLY KNOWN; WITH EXPLANATORY REMARKS.

TO WHICH IS PREFIXED,

AN ESSAY ON THE PRINCIPLES OF CIVIL GOVERNMENT.

DESIGNED FOR THE INSTRUCTION OF YOUNG PERSONS IN GENERAL AND ESPECIALLY FOR THE USE OF SCHOOLS.

By ALFRED CONKLING.

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ALBANY:

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TO

THE HONORABLE

STEPHEN VAN RENSSELAER.

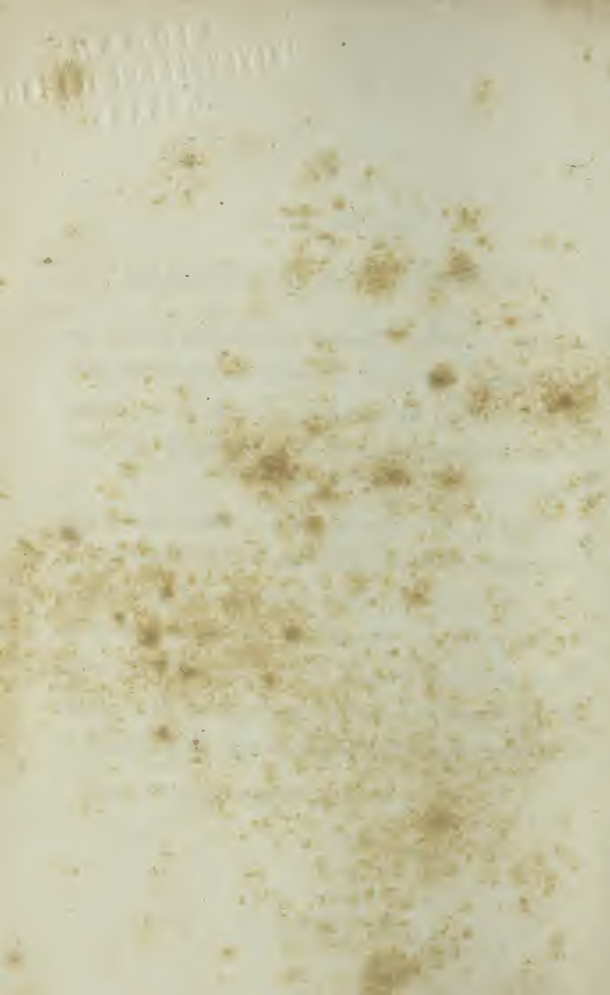
The following Manual is designed for the instruction of the youth of our state in the true principles of Civil Government, and in such portions of our Jurisprudence as it most deeply and constantly concerns them to know.

To you, Sir, who are so eminently and justly distinguished as an enlightened and munificent patron of education, and a friend of civil liberty and social order; to you, whose whole life has exhibited so consistent and so persuasive an example of all those virtues that most adorn the human character, this work is most respectfully inscribed.

ALFRED CONKLING.

*6 Dec 38*

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## PREFACE.

It is by no means the design of this Manual, to make "every man his own lawyer." In every civilized community, under the government of laws, a separate and distinct body of men, whose chief business it is to understand the laws in all their details, and to assist the citizen in the maintenance and enforcement of his civil rights, is indispensable. It is believed, however, to be high time that such portions of our laws relating to the ordinary business of social life as can be readily understood, and especially that our *Criminal Code*, should be rendered more easily accessible to all, and should henceforth form a part of the education of the whole body of our youth. "To know with precision what the laws of our country have forbidden, and the deplorable consequences to which a wilful disobedience may subject us, is a matter of universal concern." For such is the infirmity of our nature, and such the violence of human passions; so strong and so numerous are the provocations and temptations to which we are constantly exposed, that no individual, however upright, can safely conclude that he may not possibly become an offender. But a knowledge of the nature, extent and degrees of crimes, and the clearer perception likely to arise from it, of their real turpitude, and of the necessity and justice, as well as of the danger of punishment, cannot but operate as a salutary restraint.

Indeed, the opinion that a work like the present, is much wanted, has now become prevalent among intelligent and reflecting men. It is strongly expressed by the present able and enlightened Superintendent of Common Schools, in his last annual report to the legislature, and also in the report of

a committee of the Regents of the University, relative to the education of teachers.\*

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\* So early as the year 1819, (as I perceive by a copy of the "Instructions for the better government and organization of Common Schools," sent out in that year, which fell in my way just as this work was going to press,) the then Superintendent of Common Schools earnestly inculcated the propriety of introducing into our schools, the study of certain parts of our laws. His remarks upon this subject are so forcible and convincing, that I gladly avail myself of them as auxiliary to my design.

"In recommending," he observes, "the study of our criminal code, so far as relates to the nature and definition of public offences and the extent of punishments, the superintendent is aware that he is introducing into schools a new branch of study. But he is confident the innovation will not be thought useless, or impolitic, when it is considered how much it concerns every man to know what acts are criminal in law, and what measure of punishment is provided for them; and when it is also considered how many acts are made criminal in the statute book, which, not being so independent of positive regulation, are to be learnt only by study and research. It cannot have escaped the most common observation, that offences, made such by positive statute, are often committed through ignorance of the law; and that the guilt of acts, in themselves criminal, is sometimes incurred through ignorance of the full extent of their criminality. *Ignorance of law is no excuse for its transgression.* And while this is recognized as a fundamental principle, no man can be safe, without some knowledge of the law, for the transgression of which he is so unconditionally answerable. The influence, also, which such knowledge has on the mind, is another consideration no less favorable to its early cultivation. If a knowledge of the nature of crimes and punishments be early inculcated on the minds of children, their abhorrence of criminal acts cannot fail to be more deeply impressed; and the probability of their committing them proportionably diminished.

"As to making our civil jurisprudence the object of study in common schools, it is proper to observe, that it is not intended to recommend the study of law generally; but of such particular parts only, as every man of business must know, and which, if he does not learn at school, he must learn elsewhere. A knowledge, for example, of what contracts should be in writing; of what solemnities are required in wills and other instruments; of what consideration is necessary in certain agreements; and of such other parts of law, as are of like applicability to the common concerns of life, is of such obvious importance, that it cannot be necessary to urge any arguments in its favor. It is considered a proper object of study for the elder classes of boys in common schools, and it is hoped, that when suitable books are provided, it will receive a degree of attention corresponding with its merits."



The following work is not, however, limited to those parts of our laws indicated in these reports as proper to compose such a work, but embraces, also, some other matter which appeared to the author too important to be omitted. For example, to the abstract of the criminal code of this state, he deemed it proper, for reasons too obvious to require enumeration, to subjoin a summary of the criminal laws of the United States. He trusts, also, that he has considerably enhanced the value of the work, by the introduction of occasional explanatory remarks; and especially by the preliminary Essay on the Principles of Civil Government, studiously adapted to the comprehension of boys, and designed especially for their instruction, by being used as an ordinary reading exercise in schools. He cannot but cherish the hope, that this brief essay, meagre and familiar as it may appear to mature and cultivated minds, may contribute something towards disseminating among all classes of the rising generation, just notions of Civil Government, an object which every enlightened man must perceive to be of immeasurable importance, and every enlightened patriot ardently desire to see accomplished.

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The opinions relative to the importance of this study, then entertained by this enlightened, practical and patriotic citizen, have since been publicly reiterated by him, as secretary to the board of regents, and very recently, in an address delivered by him at the public exercises of the Albany Academy, as president of the board of trustees of that institution, and published at their request.



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# PART I.

## AN ESSAY ON THE PRINCIPLES OF CIVIL GOVERNMENT.

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### CHAPTER I.

#### OF THE NATURE AND NECESSITY OF CIVIL GOVERNMENT.

1. Man is by nature a social being. From the cradle to the grave, he stands constantly in need of assistance from his fellow man. During his long and feeble infancy, he is incapable of supplying any one of his numerous wants, and if left to himself, would scarcely survive a single day. And even in the full vigor of maturity, should he separate himself from society and attempt to live in solitude, he would probably soon perish of cold, hunger or disease, or fall a prey to savage beasts or poisonous reptiles.

2. Accordingly, we find mankind throughout the earth, associated together as nations. But though man cannot subsist and be happy except in a social state, it is unfortunately also true, that even this state is productive of difficulties and dangers.

If all men were perfectly virtuous, they would naturally live together in peace and amity. But

no individual is wholly free from the influence of bad passions; while in many persons the vicious propensities of our nature are many fold stronger than the virtuous.

3. All men, for example, are more or less covetous, more or less envious, and more or less revengeful. These evil passions impel us to inflict injuries upon each other; and so powerful is their sway over the human heart that no effectual means has yet been discovered of wholly restraining their indulgence. It is a melancholy and humiliating truth, that even in the most civilized nations, there are knaves and oppressors, thieves and robbers, slanderers and murderers.

4. But if this is the case where, (as in our own country,) there are severe laws against these offences, and magistrates and courts and other ministers of justice to carry them into effect, what would be the condition of a society destitute of laws, and where every one was left to follow his own inclinations? The answer is easy. Fraud and violence would reign triumphant. The simple would become the helpless dupes of the cunning, the timid would fall a prey to the bold, the feeble to the strong, and society would soon cease to exist.

5. Unrestrained liberty then, is incompatible with the very existence of society. In other words, society cannot be upheld without laws for the protec-



tion of its individual members. Human laws constitute Civil Government. Its effect is to take away from those who live under it, a part of their natural liberty, by restraining them from doing some things which their natural inclinations, in the absence of such restraints, might lead them to do. Has any one a right to complain of this? Certainly not. That would be, in effect, to blame the Creator for not having made us different beings.

6. Should I, therefore, hear a man railing against the laws of his country, because they did not allow him to act in all respects as he pleased, I should set him down as a most unreasonable person. And if I should think it worth while to attempt to convince him of his folly, I would expostulate with him thus :

Your complaints are without foundation. For, in the first place you are at liberty to do all that your fellow-citizens are at liberty to do. There is, therefore, in this respect a perfect equality between you and the other members of society. But there is a much better reason why you ought not to complain.

7. You in fact enjoy far more liberty than you could do if there were no laws. You think it a hardship that you are not permitted to do as you please. But remember that if you had this license, others would also have it. And, suppose it should

please some man stronger than yourself, to drive you out of your house and keep possession of it himself; to take away your horse; to stop you on the highway; to break your bones; to blast your reputation; or to destroy your life;—there being no law forbidding such acts, and no human punishment for them, this man would probably do his pleasure.

8. The law which restrains your freedom, lest you should do harm to others, is therefore your best friend; because it also restrains others from doing harm to you. Without it, you would have no security for your property, your person, or even your life.

Thus then we see that those laws which are necessary for the maintenance of good order in society, are beneficial to each individual member of it: for although by entering into a society subject to civil government, we give up a share of our personal independence, we are more than compensated by the security we obtain for the rights which remain to us.

9. Hence we may learn the true signification of **CIVIL LIBERTY**. As actually existing in any particular country, and as distinguished from unrestrained liberty, it means, *the liberty of doing what the laws of that country permit, and that only*. It is clear that, in this sense, it may be, (as indeed we

know it is,) a very different thing in one country from what it is in another; since by the laws of the one, many things may be permitted, which in the other are forbidden.

10. Thus, for example, the liberty of the press, the trial by jury, the power of devising property, may, or may not be allowed by the laws of a country; and in like manner, gaming, polygamy, the making and vending of ardent spirits, or other poisonous substances, may, or may not be tolerated. Indeed, considerable diversity in this respect is proper and even necessary.

11. Laws ought to be adapted to the circumstances of nations. They require to be varied according to the climate, extent and relative situation of the country, and to the number, occupations, intelligence, wealth, disposition, religion, &c. of the inhabitants. This is a very important principle, and should be kept constantly in view in framing laws.

12. We have seen what civil liberty is, as actually enjoyed at any given time, by the people of any given country. Now let us inquire what it is, as it *ought* to be enjoyed at all times, in every country. It is in its nature a great blessing. To confer and secure it, should be the great object of civil government.

13. But the frame of the government and the laws of a country, may, or may not be adapted to

this all important end; and though the worst government is better than none at all, yet the value of civil liberty to any people depends upon the degree of perfection in which they possess it. It is very important therefore to ascertain in what its perfection consists.

14. Where then may civil liberty be said to exist in perfection? I answer in that country only, *where natural liberty is restrained by human laws so far as is conducive to the general welfare, and no farther.* Civil liberty in perfection may therefore be said to consist in the greatest measure and degree of freedom from restraint that is consistent with the public good.

15. This is the just definition of what the actual civil liberty of the people of every country *ought to be.* In this sense it is a boon which cannot be too highly prized. Those who possess it, should watch over and guard it with unceasing vigilance. Those who possess it not, should struggle to obtain it. It was for this, that our patriotic fathers waged, and successfully carried through, a seven years' war of toil and suffering and blood, with the most powerful nation of the earth.

16. They sought to secure it by obtaining the right of self-government. This right they gained; and from them it has come down to us. To endeavor to use it wisely, is our highest duty to our-

selves: to transmit it if possible in full vigor to our posterity, is our highest duty to them.

Let every American citizen be mindful of these sacred obligations. But to enable us faithfully to discharge them, it is necessary that we should perfectly understand the true nature of liberty. And yet, from the manner in which we not unfrequently hear it spoken of, there is reason to believe that the notions entertained of it by many, if not absolutely erroneous, are at least indistinct and imperfect. For example, it is often confounded with NATIONAL INDEPENDENCE.

17. Thus we hear it said, that our revolutionary war was a struggle for *liberty*, and that by its victorious termination, *liberty* was achieved. It is true that it was the love of liberty which animated our revolutionary fathers, and that sustained them in their great and glorious conflict. But strictly speaking, it was not civil liberty that they achieved. It was *National Independence*, and it was nothing more. It was the faculty of self-government—the privilege of framing a government for themselves and of making their own laws, instead of receiving laws from the king and parliament of Great Britain. It was a change from colonial dependence to a state of independency.

18. This was in truth, as the event has proved, a most important step, towards the acquisition of

civil liberty. But what was to be the consequence of our separation from Great Britain, none but the Almighty disposer of events could foresee. This was to be determined only by experience; and it depended, under providence, upon the manner in which the right of self-government should be used.

19. If our fathers had been less wise or less fortunate in the choice of a form of government, they and their posterity might even have been losers, instead of gainers, by the change. If, for example, they had established a monarchy instead of a republic, we might have groaned under a military despotism: and if they had framed too weak a government, we might have been plunged into the horrors of anarchy. What they gained, then, by the revolution, was not civil liberty, but only the *means* by which, if wisely used, it might be secured.

20. There is another common use of the word liberty, which though it does not necessarily imply ignorance of its true meaning in the speaker, is nevertheless calculated to mislead. This is when it is made to signify nothing more than *freedom from confinement*. Thus we are accustomed to say of a man who is imprisoned, that he is deprived of his liberty.

21. Imprisonment is certainly a great evil, and hard to be borne. It is however, after all, no more

than confinement against the will, to one particular place. But the power of going where we please, is only *a part* of civil liberty. A man in confinement may still, in many things, follow his inclinations. He may at his pleasure, lie down and rise up—sit, stand or walk: he may read or write: his property is protected by law, and he may dispose of it as he pleases: he may have a physician to attend him if he is sick: he may lawfully defend himself against illegal violence; and if he is injured, he may appeal to the laws for redress.

22. But there is another and far more important and instructive view of imprisonment, which shows that it may be, and in general is, no infringement of civil liberty at all.

If I am forcibly confined contrary to the laws of my country, it is then certainly true that a part of my civil liberty is taken away; for by law, I have a right to be at large.

23. Again, if I were to be imprisoned for a violation of some law clearly unnecessary and unreasonable, like the law which once existed in England, forbidding people to wear shoes of a particular form, I should in that case also, be deprived of a portion of civil liberty, which I ought to be allowed to enjoy; because the welfare of society did not require this law.

24. But suppose a man to be imprisoned for vi-

olating some just and necessary law, as the law against theft or robbery, for example. Is *he* deprived of any part of his civil liberty? Let us examine this matter.

25. We have seen that civil liberty in its highest perfection, is only that amount of freedom from restraint that is consistent with the public interest. But it is not consistent with the public interest, that thieves and robbers should go unpunished. If it were so, the laws against theft and robbery would be tyrannical and unjust—which no one will pretend.

26. True, the right to go from place to place according to our pleasure, is *one*, and a very important one, of the civil liberties, which the laws ought studiously to protect. But then, like most other civil rights, it is held by each citizen, upon the condition that he shall do nothing by which it shall be justly forfeited. So long as he fulfils this condition, the right remains. But when he violates the condition, the right is no longer his. And although for this offence he is shut up in prison, he may with strict truth be said to be still in the full possession of his civil liberty. He enjoys all the liberties that belong to him; all to which he has, by the laws of his country, a just claim.

27. But this is not all. Another highly important part of civil liberty consists in the right of hold-



ing our property in security. But if the thief and the robber were suffered to escape with impunity, no man's property would be any longer safe. To permit them to go unpunished, therefore, would be to endanger, and in effect, to violate, the civil liberty of all the rest of the community.

28. I have thus endeavored to shew the nature, necessity and just limits of civil government. We have seen that it consists of certain rules or laws to regulate the conduct of the members of society, in their intercourse with each other; and that it is necessary, because mankind cannot live without it. We have also seen, that it ought to be carried just so far as is requisite for the general good, and no farther. If it falls short of this, it fails in its object; if pushed beyond this, it becomes unjust and oppressive.

29. In order, therefore, to determine beforehand, whether any proposed law will, if made, be a good or a bad law, we must inquire whether or not it is likely, upon the whole, to advance the public interest. In some cases this question is easily settled. Thus if the question were, whether there ought to be a law to punish the crime of perjury, or to compel men to fulfil their contracts, there would be no room for doubt or hesitation.

30. But on the other hand, the question is often one of great difficulty. It may be easy to see that

a particular law would operate beneficially to one class of society, or in one respect; but then it may be equally clear that it would be hurtful to another class, or in another respect; and it might be very hard, or even impossible, to determine whether, upon the whole, the law would be a good or a bad one.

31. Indeed, it not unfrequently happens, that after a law has been many years in operation, the question of its utility still remains extremely doubtful; or, at least, that public opinion is extensively divided upon it. Until within a few years, the laws of the state of New-York empowered a creditor to imprison his debtor, in all cases where the latter had not sufficient property to satisfy the debt. The first attempts to repeal this law were unsuccessful. Its repeal was finally brought about only by great exertions on the part of those by whom it was disapproved; and similar laws yet exist in several of the states of the American Union.

32. Strong and well supported efforts have lately been made in the state of New-York, to procure the repeal of the laws against usury, or the taking of more than a certain fixed rate of interest for the loan of money. Similar efforts have also been made, in the same state, to abolish the punishment of death for any crime whatever, and to substitute imprisonment for life in its stead; and there are not wanting

many good men who believe that this change ought to be made.

33. There is another difficulty of no small magnitude to be overcome, in making laws for the government of society. It may be perfectly obvious that there ought to be a law for some particular purpose, and yet it may be no easy matter to decide what sort of a law would be the best adapted to the object in view.

34. Thus, for example, no one questions the propriety of having some legal provision for repairing the public roads. But whether the law now in force in the state of New-York is the best that can be devised for that purpose, is very doubtful. It imposes a heavy burden on the citizens, and yet our roads are generally in a bad condition. Many judicious persons are of opinion that by a law requiring a different mode of proceeding, the roads might be kept in far better order, at the same or even less expense.

35. This difficulty is always experienced in framing laws for the punishment of crimes. The design of punishment is to prevent crime. The criminal is punished, not to satisfy a spirit of revenge, but to deter men from offending. And in order to determine what degree of punishment ought to be inflicted for any particular offence, the question to be decided is, what measure of punishment will

probably be sufficient, and barely sufficient to answer this design, as far as can be reasonably expected; and which at the same time is free from objection in other respects.

36. To prescribe a lighter punishment would improperly endanger the public safety: to prescribe one more severe would be cruel and unjust. But in order to decide this important question, many things are to be taken into consideration. One important rule to be observed in framing a code of criminal laws is, to proportion the punishment for different offences, to their degrees of malignity or wickedness; since it would be absurd and mischievous to apply the same punishment to all offences. Exactly to follow this rule *alone*, is often by no means an easy task. But there are many cases in which, though this rule is never to be lost sight of, it ought not to be closely followed, but made to yield, in a greater or less degree, to other considerations.

37. If, for example, the offence in question is of a tendency peculiarly dangerous to the public safety; as the putting of poison into springs or wells of water; this would be a reason for increasing the severity of the punishment: for although such an act might possibly be done without any intention of destroying human life, and although no injury would *necessarily* result from it to any one, yet,

inasmuch as it would greatly endanger the lives of many, strong measures should be taken to prevent it.

38. So also, if the offence, in addition to being highly dangerous, is also of such a nature as to be easily committed, and with difficulty guarded against; as, for instance, setting fire to an inhabited dwelling-house in the *night*, the punishment for it ought, on this account, to be still farther increased. Accordingly we find that, by the laws of New-York, this crime is punished with death; while that of setting fire to an inhabited dwelling-house in the *day time*, is punished by imprisonment in the state prison for a term not less than ten years.

39. But enough has been said to show that the science of legislation is one of great difficulty as well as importance. Hence, the inquiry, by what means a nation can most effectually secure to itself the benefit of good laws, and avoid the evils of bad ones, becomes a matter of the deepest concern.— This inquiry has reference primarily to the *form* of government; because it is this that determines by whom, and in what manner, the power of legislation is to be exercised. There is no subject relating to the affairs of this world which is of equal importance, or which has so much occupied the attention of statesmen.

40. All the human governments which have

hitherto existed, have generally been considered as belonging to one or the other of the following forms, viz: 1. **DESPOTISM, OR ABSOLUTE MONARCHY**—in which the supreme power, or power of legislation, is exercised by one person, usually called king, queen, emperor or empress: 2. **ARISTOCRACY**—in which it is exercised by a body of men more or less numerous, in the choice of whom the people at large have no voice: 3. **A REPUBLIC, OR DEMOCRACY**—in which this power is exercised by the people themselves, either collectively in person, (as it might be in very small communities, but not in large ones,) or, as in our own country, through their agents or representatives, deputed by them from time to time for that purpose. And in modern times, a form of government has also been invented, which, as a whole, differs essentially from either of these forms, for it partakes of the nature of each. This is called a *mixed monarchy*; and it is, and long has been, the form of government in Great Britain, as it is also at present in France.

41. Concerning the comparative excellence of these several forms of government, a great deal has been said and written, and each has had its advocates. It would require too much space to examine, or even enumerate the arguments which have been urged for and against them; nor is such an inquiry necessary. The people of this country have

made a decision for themselves in favor of the republican, or democratic form; the wisdom of which, our experience thus far, has happily tended to establish and confirm, and to which, so long as our countrymen remain virtuous and enlightened, they will adhere.

42. If it were certain that those, to whom the power of making and administering the laws might be entrusted, would always possess and exercise the necessary degree of wisdom and virtue, it would matter little in whose hands the power might be placed; or, in other words, what might be the form of the government. But all experience shows that there is no such certainty. This is the great and conclusive objection against monarchical and aristocratical forms of government.

43. There is, at all times, great danger that the government will fall into the hands of incompetent or wicked rulers; and then, however severely the nation at large may suffer by their misrule, there is no remedy but to deprive them of their power by force; a thing which it is often difficult and sometimes impossible to do; which is generally attended with bloodshed; and which, after all, may lead to no lasting reform.

44. In a democracy or republic, on the contrary, though the people may sometimes mistake their true interests, or their representatives abuse their

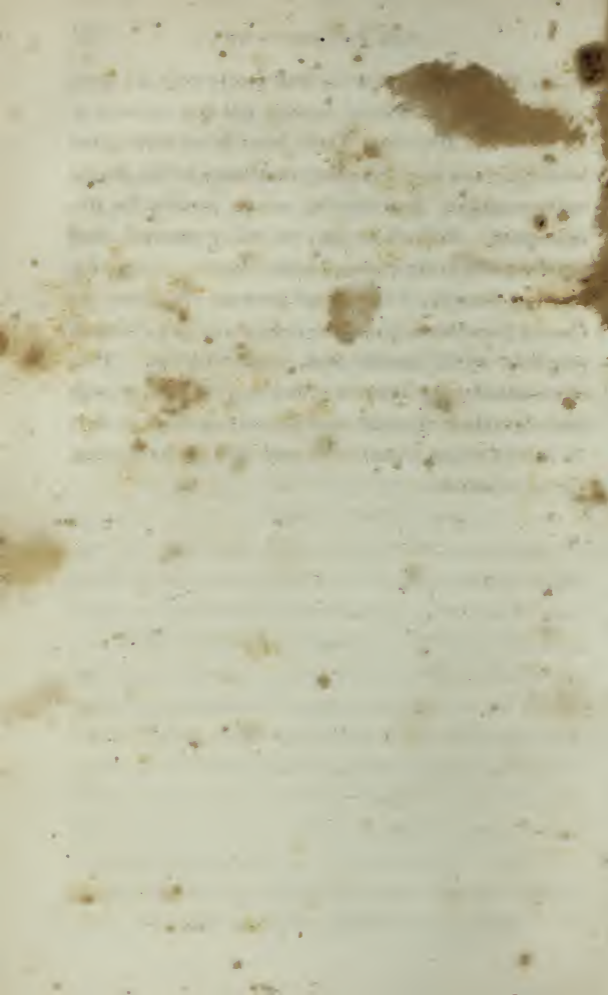
trust, a remedy may always be speedily and easily applied by the people themselves, who, being themselves the sufferers, are not likely, in case of any serious grievance, to want the inclination to apply it.

45. The superiority of this form of government arises chiefly from the greater *security* it affords against the *danger* of bad laws, and oppressive acts of authority. In this *security* consists what has been denominated by an English writer, POLITICAL LIBERTY; which he aptly defines to be, "the security with which, from the constitution, form and nature of the established government, the subjects enjoy civil liberty."

46. From the view which has now been given of the necessity and nature of civil government, we may, in conclusion, draw this most important and useful lesson; that to yield a ready and cheerful obedience to the laws, is the duty, as well as the interest, of every member of society. Many of the most important laws to be found in all civilized countries, only command what it would be equally our duty to do, or forbid what it would be equally our duty not to do, if there were no such laws in existence. Thou shalt not kill—thou shalt not steal—thou shalt not bear false witness against thy neighbor—are among the express commands of God; and would be equally obligatory upon the consciences of men if they were not also human laws.



47. So also, ought we to deal justly with all men, even though the laws of society did not require it. In these and like cases, these laws do no more, than lend their aid in compelling obedience to the divine and moral law, by imposing a new penalty for disobedience. Indeed, it may be safely asserted, that obedience to every just and useful law, is a moral duty, even though, if there had been no such law, we should have been under no obligation to do what it requires, or to abstain from what it forbids. It is, of course, for the interest of society, that every such law should be obeyed; and he who violates it, does an injury to the community and sets an evil example to others.



## CHAPTER II.

### OF THE FORM OF GOVERNMENT IN THE UNITED STATES.

1. It has been stated in the preceding chapter, that what is called our revolutionary war, which commenced in 1775, and lasted nearly eight years, was undertaken by the American people to acquire the privilege of establishing civil government and making laws for themselves; and that it was this great privilege, and this only, that they achieved.

The design of this chapter, is to show in what manner this right of forming their own system of government has been exercised.

2. But before doing this, it is proper, by way of introduction, to make a few additional observations concerning the nature of civil government.

In the preceding chapter, it has been spoken of as consisting of those rules or laws which the community at large find it necessary and useful to lay down, to regulate the conduct of its individual members. But it is not enough merely to *make* laws. Some sufficient provision must also be made for carrying them into effect; otherwise they would not be obeyed.

3. There may be disputes, as we know there often are, about the meaning of laws; and when such

disputes arise, they have to be settled: in other words, the laws must be *interpreted*. Men, too, who are accused of breaking the laws, may or may not be really guilty. There must, therefore, be some means provided by which the guilt or innocence of those against whom such charges are made, may be ascertained.

4. Moreover, when any member of the community has been found guilty of violating the laws, and adjudged to undergo some corporal punishment, or to pay a sum of money; it is necessary, in the first case, that the punishment should be actually inflicted upon him, and in the second, that he should be actually made to pay the money. These acts, of interpreting the laws and deciding questions which arise under them, and of executing them, are in their nature distinct from the act of making laws.

5. The powers which are exercised in carrying on the business of civil government are, therefore, of three kinds; called *legislative, judicial and executive* powers. These three powers *might* all be entrusted by the people to the same hands; but for many reasons they ought to be kept distinct. Civil government is, therefore, properly divided, or rather, the agents by which it is carried on, are divided into three branches, viz: the LEGISLATIVE, the EXECUTIVE, and the JUDICIAL branches.

I will now proceed, in pursuance of what I have already said was the design of this chapter, to give some account of the civil governments which have been formed in the United States.

6. Before the revolution, the American people were divided into thirteen distinct bodies, called colonies; which, though all acknowledged allegiance to Great Britain, were independent of each other, and each had a government of its own. But when, in 1774, our forefathers determined no longer to submit quietly to the oppressions of the parent country, and when they foresaw that they should probably be obliged to fight for what they conceived to be their rights, it was resolved, by the several colonies,\* as the only means by which they could hope for success, to make common cause with each other, and to act together.

7. For this purpose they appointed delegates to meet at Philadelphia, with power to "concert, agree upon, direct, order and prosecute," all suitable measures for the redress of their grievances. This body of delegates was called the Continental Congress. They met in September, 1774, and after a short, but active and important session, at the close of which they recommended, that another congress

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\*The colony of Georgia was not, however, a party to this measure. But that colony acceded to the general association in July, 1775.

should be chosen to meet at the same place in May of the next year, they separated and returned to their respective colonies.

8. Another congress was chosen, according to this recommendation, which met in May, 1775, and continued in session almost constantly for several years. On the fourth of July, 1776, there being then no longer any prospect of reconciliation with Great Britain, except by submission on the part of the colonies; this congress issued the **DECLARATION OF AMERICAN INDEPENDENCE**; by which, appealing to the Supreme Judge of the world for the rectitude of their intentions, they declared the United Colonies to be **FREE AND INDEPENDENT STATES**.

This, it is hardly necessary to say, is that great and glorious event in our history, which we annually celebrate on the 4th of July.

9. The powers of this congress, so far as related to the war with Great Britain, were, in one sense, unlimited. But then the measures which it agreed upon, could in general be carried into effect, only by the states, acting in their separate capacities; and as its authority was sometimes disputed, and the justice or wisdom of its recommendations sometimes denied, great difficulties were frequently experienced in carrying on the war.

10. In the hope of removing these difficulties,

the congress, in 1777, drew up ARTICLES OF CONFEDERATION, which it advised the states to adopt. These articles specified the powers which the congress might exercise, and the duties and obligations of the states, as members of the confederacy. They were finally agreed to by all the states, one by one, though not without great difficulty, and considerable delay. They were the first *written* bond of Union among the states, and continued in force through the war, and during several years after, until the adoption of the present constitution of the United States.

11. But very soon after the Articles of Confederation went into operation, it was found that they were faulty in several important respects, and were insufficient fully to answer their design. So great and extensive did the dissatisfaction with them at length become, that in 1787, delegates were appointed to meet in convention at Philadelphia, in May, of that year, for the purpose of revising them and proposing alterations therein.

12. This convention met accordingly. It was composed of many of the wisest, most experienced and most patriotic men of that day. One of the delegates from Virginia, was General Washington, who was unanimously chosen president of the convention. In entering upon the great work before them, it was considered useless to attempt merely

to *amend* the articles of confederation. The convention, therefore, proceeded at once to devise an original scheme of national government, and after several months of zealous and laborious devotion to the duties of their high trust, they agreed upon a constitution, which, having been submitted to the people of the several states, and adopted by them, went into full effect on the 4th of March, 1789.

13. Thus was framed and adopted the CONSTITUTION OF THE UNITED STATES; under which the American people have prospered beyond all previous example in the history of the world, and have already become a great and powerful nation. Its design was, to lay a broad and solid foundation for the civil and political liberties of the whole American people, which should continue through all future time.

14. The people of the several states, if they had thought proper, *might* have refused to establish any national government, and so have remained separate and wholly independent of each other. But the mischiefs and disasters likely to result from such a course were easily foreseen. To say nothing of other objections, the danger of wars among themselves, and the inability of any one state to defend itself against foreign nations, should it be attacked, were reasons sufficient for forming a firm union among themselves.



15. On the other hand, if they had seen fit, they might have wholly given up their separate political existence as states, and had but one government, or set of agents to exercise the whole power of making and administering the laws for the whole nation. But such a course, besides being extremely inconvenient on account of the great extent of the country, would have been far less favorable to the security of liberty.

16. It was wisely concluded, therefore, to adopt a middle course between these two extremes. And, accordingly, while the constitution of the United States unites the people of the several states into one great nation to a certain extent, that is, for the exercise of some of the powers of self-government—on the other hand, it leaves them distinct and independent communities, for the exercise of all the other powers of self-government.

17. The government of the United States may be called **A CONFEDERATED REPRESENTATIVE REPUBLIC**. What makes it a confederated government, has just been explained: and it is a representative republic, because the people exercise the power of self-government through their agents or representatives, chosen directly or indirectly by themselves.

18. The national government is empowered by the constitution, to enact and carry into execution,

such laws as equally concern the whole American people in common. Thus, one of the powers to be exercised by the nation at large, is that of declaring war against other nations, whenever unhappily, such a measure may become necessary, for the honor and welfare of the country. But this power would be worse than useless, without the means of carrying on a war.

19. Another of the powers given by the constitution of the United States, therefore, is that of raising and supporting armies; another, that of providing and maintaining a navy; another, of making rules and regulations for the government and regulation of the land and naval forces of the nation; and as these things cannot be done without large sums of money, power is also given to lay and collect taxes, and to borrow money on the credit of the United States.

20. Another of these powers, is that of establishing post-offices and post-roads; that is, of providing by law for the safe conveying of letters, newspapers, and the like, from one place to another, for the accommodation of the public: another, that of regulating commerce: another, that of coining money, and regulating its value: another, that of fixing the standard of weights and measures: another, that of providing by law for the granting of patents for new and useful discoveries and inventions, and

for securing to the authors of books, maps, &c. the right of having their productions printed and published for their own profit.

21. Another of these national powers, is that of providing for organizing, arming, and disciplining the militia, and for calling them into the service of the nation to execute its laws, to suppress insurrections and to repel invasions: and another, that of making all laws which shall be necessary and proper for carrying into execution all the other powers vested by the constitution in the government of the United States, or in any department or officer thereof.

22. The foregoing are in their nature, *legislative* powers, and are accordingly vested by the constitution in the legislative branch of the government. This branch is called the CONGRESS OF THE UNITED STATES. It consists of two bodies of men; one of which is called the House of Representatives, and the other, the Senate of the United States; and they are required by the constitution to meet at least once in every year.

The members of the House of Representatives are chosen by the people of the several states, for the term of two years, and the number sent from each state, is in proportion to the number of its inhabitants. The Senators are chosen by the legis-

latures of the several states, for the term of six years, and two are sent from each state.

23. The chief EXECUTIVE branch of the national government, consists of a single officer, called the PRESIDENT OF THE UNITED STATES; who holds his office during the term of four years. He is chosen by persons called electors, appointed for that purpose by each state; or, in case no one has a majority of the votes of all the electors, then, by the house of representatives of the United States. The number of electors appointed by each state, is equal to the number of the representatives to which such state is entitled, together with its two senators. When the election is by the house of representatives, the vote is by states—that is, the representatives from each state, collectively, give one vote.

No person can be chosen by the house of representatives, except some one of the persons, not exceeding three, who have the highest number of the votes of the electors.

24. By the constitution, the President is made commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; and he has power to grant reprieves and pardons for offences against the United States. He has power, moreover, by and with the advice and consent of the senate, to make treaties, provid-

ed two-thirds of the senators present concur; and to nominate, and by and with the advice and consent of the senate, to appoint ambassadors, other public ministers and consuls, judges of the supreme and other courts of the United States, and all other officers of the United States, whose appointment is not by the constitution otherwise provided for, and which shall be established by law. Congress may however, by law, provide for the appointment of such *inferior* officers as they may think proper, in a different manner.

25. The President also has power to fill vacancies which happen in offices, when the senate is not in session. But the commissions granted in such cases, expire at the end of the next session of the senate. He has, moreover, a very important power in relation to all bills which pass the two houses of congress. Every bill is to be presented to him for his signature; but if he does not approve it, he may return it with his objections; in which case it does not become a law, unless two-thirds of each house of congress shall afterwards vote for it. If, however, he does not return a bill in ten days, provided congress do not adjourn within that time, it becomes a law without his signature.

26. The President is required by the constitution, from time to time, to give to the congress information of the state of the union, and to recom-

mend to their consideration, such measures as he shall judge necessary and expedient; and he may, on extraordinary occasions, call the congress together before the stated time of meeting. It is made his duty, also, to receive ambassadors and other public ministers sent by foreign nations; and to take care that the laws of the United States are faithfully executed.

27. There is also an officer of the national government, called the Vice-President, whose duty it is, to preside in the senate of the United States, and to perform the duties of the President in case of the office of president becoming vacant, by death or otherwise, before the expiration of the time for which he was elected. The Vice-President is elected at the same time, and in the same manner, as the President, except that where there is no choice by the electors, the *senate* choose from the *two* highest on the list.

28. The constitution provides that the JUDICIAL branch of the national government shall consist of one SUPREME COURT, and such inferior courts as the congress may, from time to time, ordain and establish. Congress, in pursuance of the power conferred upon them, have ordained and established two other courts, called Circuit and District courts.

29. The powers of these courts are prescribed

and regulated by the constitution and laws of the United States. A statement of them sufficiently full to be useful, would require too much space, and would be more perplexing than instructive to young readers. The great design of these courts being, to aid in giving effect to the constitution and laws of the United States, it may be said, in general, that they have all the powers necessary to be exercised by this branch of the government, for this purpose.

30. It being of the highest importance that the judges should act independently and free from the fear of displeasing any one, it is provided by the constitution that they shall hold their offices during good behavior; that is, so long as they continue faithfully to perform their duties; and also that their salaries shall not be diminished during their continuance in office. But they are liable to be impeached for misconduct by the House of Representatives, and tried before the Senate of the United States; and if found guilty by two-thirds of the senators, must be removed from office.

31. The constitution, and the laws of the United States made in pursuance of it; and all treaties made under the authority of the United States, are declared by the constitution, to be the SUPREME LAW OF THE LAND; and it is further expressly declared, that the judges of every state shall be bound thereby; any thing in the constitution or

laws of any state to the contrary notwithstanding. From the nature of the case, this ought to be so. The constitution having, as we have seen, been formed in the name and behalf of the whole American people, and having been solemnly ratified by them, is the highest and most authoritative human law known in this country.

32. Whatever is done by any branch of the national government under the authority of the constitution, and in conformity with it, is binding upon all the citizens. No individual, nor any number of individuals—not even the whole people of any state, can rightfully resist what is thus done. On the other hand, the congress can make no law which the constitution does not confer upon them the power to make; nor can either of the other branches of the government do any thing not authorized by the constitution, or some law of congress, made in pursuance of the constitution.

33. If congress should pass an act which the constitution does not warrant, it would not be binding as a law. Every citizen would have a right, not indeed, in the first instance, to resist it by force, but the right, when prosecuted or sued before any court for not obeying it, to dispute the power of congress to make such a law; and it would be the duty of the court to decide in his favor.

34. But in as much as it was foreseen that the



congress might sometimes pass acts concerning the constitutionality of which, there would be room for honest difference of opinion, and about the constitutionality of which, even different courts might come to opposite conclusions, it was necessary that the constitution should provide some mode by which such questions might be fully settled, so as to put an end to farther dispute.

35. This it has done, by establishing the Supreme Court of the United States, and giving it power to re-examine and finally to decide, constitutional questions, which have been passed upon by other courts. When, therefore, this court decides an act of congress to be unconstitutional and void, (as it has in several instances done,) no other court can constitutionally enforce such act; and on the other hand, if the supreme court decide a law to be constitutional and valid, all other courts are bound so to consider it, and it is to be so regarded by all.

36. The constitution of the United States also provides that no laws of certain kinds therein mentioned, shall be passed by the legislature of any state. This provision was necessary, in order to prevent any one state from making laws which would be hurtful or dangerous to the people of the other states, or which would interfere with the laws of congress.

37. If, therefore, a state legislature should pass an act which is forbidden by the constitution, it would be void, and ought so to be declared by all courts in which it might come in question. Every person has a right to insist that such an act is not binding upon him, and, if the decision of the other courts should be against him, he has a right to appeal to the supreme court of the United States for redress; whose decision, as in the case of an act of congress, would be final and conclusive.

38. I have now endeavored briefly to explain in what manner the American people have agreed to exercise a portion of their power to govern themselves. I have shown that they have organized a national government, and that they have conferred upon the several branches of it, authority to make and carry into effect certain laws, and to perform certain acts, which shall be binding upon the whole nation. But though the powers thus conferred, are in their nature highly important, yet they are few in number, compared with those which remain to the people of the several states, to be by them separately exercised in such manner and form as they may consider most beneficial to themselves.

39. For example, congress have no power, with comparatively few exceptions, to pass laws for the punishment of crimes: so that, for any thing the national government could do to prevent it, not one

out of a thousand of the offences committed in the United States could be legally punished.

40. Neither has congress any power to pass laws for the division of states into counties and towns; for the incorporation of cities and villages; for the establishment of common schools, academies and colleges; to authorise the transfer of property by will; to regulate the descent of property from persons who die intestate; to direct the manner in which wills or deeds shall be executed, proved or recorded; to fix the rate of interest to be paid for the loan of money; to regulate the practice of physic; to provide for the laying out, making and repairing of highways, and turnpike roads; to direct or authorize the construction of rail-roads or canals, or the building of bridges. These, and a great number of other fit subjects of legislation, belong to the vast residue of legislative authority retained by the people of the several states.

41. So of the other branches of the national government. The powers and duties of the President extend only to matters of general national concern. The national Courts have no authority, with very few exceptions, to decide controversies between citizens of any state; so that if there were no other courts, men, in most instances, could not be compelled to pay their debts, or fulfil their contracts of any kind; nor to make reparation for slandering,

defrauding, beating or otherwise injuring their neighbors.

42. In order, therefore, to bring into action and regulate these remaining powers of civil government, the people of the several states HAVE FORMED SEPARATE CONSTITUTIONS OF GOVERNMENT for themselves. The state constitutions differ from each other in some particulars, but they are substantially alike. The state governments, like the national government, consist of three branches—the Legislative, the Executive and the Judicial. The legislative branch is composed of two bodies, the members of which are chosen directly by the people. The chief executive officer is called the Governor. In most of the states, he is also chosen directly by the people; but in some of them, by the two houses of the legislature. The judicial authority is vested in several different courts. The state governments are, therefore, representative democracies.

43. In the state of New-York one of the legislative bodies, or houses, is called the Senate. It consists of thirty-two members, who are chosen for the term of four years. The other house is called the Assembly. It consists of one hundred and twenty-eight members, who are chosen for one year. The legislature are required to meet on the first Tuesday of January in every year. The governor is chosen by the people at large, and holds his office

for the term of two years. All judicial officers, except justices of the peace, are nominated by the governor to the senate, and appointed by him, with their consent. The chancellor, the judges of the supreme court, and of the circuit courts, hold their offices during good behavior, except that, by a provision of the constitution, which many judicious persons consider unwise, they go out of office at the age of sixty years. The judges of the county courts are appointed for five years. Justices of the peace are chosen by the people of each town, and hold their offices four years. Ample provision is made by the constitution for the removal of all judicial officers for official misconduct.

44. Thus, then, we see that the American people have formed for themselves, and that every American citizen actually lives under, *two* distinct governments; the one a *national* and the other a *state* government. Each, in itself, is a government of limited powers; but both together possess the whole power of civil government. Whatever regulations or measures are necessary for the safety and welfare of society, one or the other is authorized to adopt. What one cannot do, the other may.

45. There is, however, one very important distinction between the two governments, which ought to be universally and well understood. It is this. The government of the United States is a govern-

ment of *delegated* powers. The congress can pass no law which the constitution of the United States does not *give* them authority to pass; and the other branches of the government can do no act, except in pursuance of authority conferred upon them either by the constitution or by some law of congress.

46. But with the state governments, the case is widely different. The powers which it may be necessary for a state legislature to exercise, are too numerous to be particularly specified, and could not indeed, be certainly foreseen. Accordingly, the state constitutions contain no enumeration of legislative powers. It therefore follows, that a state legislature may exercise all legislative authority not given exclusively to the congress, by the constitution of the United States, nor prohibited by it to the states, and which at the same time, is not expressly forbidden by the state constitution, or by some principle of natural or revealed law.

47. The national and state constitutions contain many important provisions, besides those mentioned, designed to promote the civil and political liberty of the citizens, by guarding against the enactment of any but good laws, and by securing the just and faithful administration of these. But as I cannot now enter into a particular explanation of them, I must content myself with observing, that it is the duty of every American citizen to endeavor

to make himself acquainted with the constitution of the United States, and of his own state.

48. The more these great fundamental laws are studied, the more wise will their provisions appear. The more thoroughly our system of government is understood, the more clearly will be perceived its superiority over every other government under the sun. The more closely we compare our own civil and political condition with that of other nations, the stronger reason shall we see for thankfulness to providence and gratitude to our forefathers.

49. It is true, those to whom the powers of government are entrusted, may err from ignorance and want of foresight, or may even wilfully abuse their trust; but being chosen only for short periods; or, if not, being liable to removal for unfaithfulness; their errors or faults may, generally, and if the people are true to themselves, will be corrected before they lead to any serious mischiefs.

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## CHAPTER III.

### OF THE NECESSITY OF UNDERSTANDING THE PRINCIPLES OF OUR OWN GOVERNMENT.

1. Enough has been said in the two preceding chapters to show, that the decision of the great and important question, whether the American people shall long continue to enjoy the blessings of civil liberty, depends upon themselves. If they have sufficient knowledge to understand and properly to value their own rights and interests, and if they take care faithfully to watch over them, they cannot be oppressed. But upon no other condition are they secure.

2. Let no American youth flatter himself, because he was born free, that he will, therefore, certainly live and die so; much less, that his children will escape oppression. In past ages, and in all countries, the great body of the people have been, and even now in most countries yet are, little better than slaves.

3. Subject to the absolute will of unfeeling masters, or oppressed by tyrannical and unequal laws; condemned to suffer punishment, without a hearing; groaning under excessive taxes; compelled to waste their lives in wars, undertaken, not for their benefit, but, to gratify the passions of their

rulers; awed into submission by standing armies, maintained for the express purpose of keeping them in subjection, and supported by the sweat of their brows; wilfully kept in ignorance of their rights, and afraid even to utter a word of complaint against their oppressors—life itself, to them, can hardly be considered a blessing.

4. But, what has been the condition of all other nations, and still is the condition of most, it would be folly to deny, may yet be that of the people of these United States. Why not? Human nature is every where essentially the same. The rulers of other nations are tyrants, not because they are naturally worse than many other men; but because they have power to oppress. Men are naturally fond of dominion, and the possession of power increases the love of it, blunts the moral sense, and hardens the heart.

5. Let the American people once cease to guard their liberties, and they will soon find rulers willing enough to oppress them. Let them once bow their necks to the yoke, and there will not be wanting a tyrant to put it on. The framers of our constitutions well knew this. They foresaw that America, like all other countries, would produce ambitious and wicked men, who would aspire, and perhaps successfully, to places of power and trust; and therefore it was, that those wise and patriotic states-

men were so careful, as far as could be done by constitutional restraints, to put it out of the power of the public functionaries to deprive the people of their liberties.

6. But it is a truth, never to be forgotten, that our written constitutions are chiefly valuable, as land marks to guide the *people*, and as standards by which to measure, or rather as tests by which to try, the wisdom and fidelity of their rulers. For, after all, of themselves, they are but parchment and ink, useful only while the principles they contain are adhered to, and liable to be evaded or trampled under foot whenever the people cease to enforce them.

7. To point out all the various modes in which our free institutions are in danger of being destroyed, and to describe the successive steps by which a calamity so great, should it ever occur, may be expected to be brought about, would far exceed the limits of this chapter. But it is enough to know, that our course is beset with dangers, and that their only effectual antidote is to be found in the intelligence and virtue of the people at large.

8. Without intelligence, how can the people judge correctly of the conduct of their public servants? How are they to know when they are faithfully served, or when their interests are betrayed? Their rulers may be capable, honest and zealous

in the discharge of their duties, and yet be discarded as unworthy of confidence: they may be incompetent, or unfaithful, and yet be retained in their places—to the discouragement of public virtue, and to the great detriment of the people.

9. All these consequences would be to be feared from the ignorance of the people, even without the great pains which are sure to be taken by aspiring men, to deceive and mislead them. But the danger is increased to a tenfold degree, by the certainty that such efforts will not cease to be made.

10. The first requisite to a just decision upon any subject, is a correct knowledge of the facts upon which the decision is to be founded. But in a country so extensive as the United States, or even a single state, very few, compared with the whole number of citizens, can be eye witnesses of the conduct of public men, or have any personal knowledge of political events and their causes.

11. The great mass of the community must, therefore, rely for information, upon the immediate actors in political affairs. The many must depend upon the few. But, unhappily, these few may have a strong personal interest in deceiving; to say nothing of the danger of their being themselves misled by the influence of their own excited passions.

12. Those who are in office, and the party leaders who support them, are naturally desirous of re-

taining the political power; and the ambitious men of the opposite party, are naturally eager to displace them, in order to get into power themselves. But, as it is only by the suffrages of the people, that either can hope to succeed, the object of both parties is, to obtain a majority of votes in their favor. With this view, the leaders of each party endeavor to convince the people that *they* are their only true friends, and that they alone, therefore, may be safely entrusted with power.

13. For this purpose, they establish printing presses, and circulate newspapers and handbills, among the people, and address them in public speeches. The means thus resorted to, would not only not be dangerous, but would be highly useful, provided those who use them, would publish nothing but the truth, urge none but fair and honest arguments, and abstain from attempts, by unfair practices, to prevent the people from listening to both sides.

14. But how widely different is their conduct! What is false is proclaimed as true; and what is true is declared to be false. What is asserted on the one side, whether true or false, is denied on the other. Where the facts are too notorious to be safely controverted, cunningly devised and deceptive arguments are resorted to, to bewilder and mislead the public mind. The same measure is applauded, as in the highest degree useful and praiseworthy—

and condemned, as mischievous and wicked. The same individual is held up as a wise and devoted patriot—and denounced as little better than a traitor.

15. Attempts are made to shut out the truth by inducing the people, through prejudice, to shut their eyes and ears against it. Appeals are made to their passions, sometimes to their worst passions, which ought to be made only to their reason and judgment: and, what is worse than all, false and pernicious doctrines and principles are put forward, and industriously propagated, to advance the present personal interests of party leaders, regardless of the lasting and irreparable injury they are calculated to produce; and even at the hazard of corrupting public morals and subverting our free institutions.

16. This is no ideal picture. No one well acquainted with our political history, brief as it is, will deny that it affords but too many illustrations of the truth of all that is here said. The great instrument by which all this is done, and the only instrument by which it can be effectually done, is the **PUBLIC PRESS**. And yet, **THE FREEDOM OF THE PRESS MUST BE MAINTAINED**. If it propagates error, it also disseminates truth; and is, after all, the only means by which the people can be sufficiently enlightened to enable them to guard against still greater evils than those which arise from its abuse.

17. Most fortunately, too, the abuse of the press, great as the evil is, may be rendered comparatively harmless, and even in a great measure corrected, by the people themselves. Let the whole American youth be well instructed; let them begin early, and continue, to read for information and to reflect upon what they read; let them take care thoroughly to understand their civil rights and obligations, so as to be able to fulfil the one and enforce the other—and the abuse of the press need no longer be dreaded.

18. When our youths shall be thus educated, and shall faithfully follow this counsel, there will be little danger of their being deluded and misled; and then, and then only, will they be qualified, upon attaining the age of manhood, to discharge, in a safe and becoming manner, the high duties of American citizens.

19. When this shall be the case, it will then be true in fact, as it is in theory, that the American people govern themselves. Then will there no longer be reason to fear the influence of universal suffrage, and then will this boasted right be of some value to its possessor. Then will it be, what our political fathers designed it should be, the safeguard of liberty.

20. But of what avail is this right to an unenlightened people? It is the right of freely choosing their own rulers; the right which every citizen has

of voting for whom he pleases. But what is this right worth to a man incapable of judging for himself? A man who does not understand the principles involved in the election at which he is to vote: a man, in short, who has no better reason for preferring one candidate to another, than that he has been brought forward by the leaders of a political party to which he himself professes to belong, but whose success, for aught he knows, will endanger the prosperity and even the liberties of his country.

21. To vote for the most worthy candidate—for that candidate whose election will be most advantageous to the public, is a *duty* which every citizen owes to himself and to society. But in what condition to perform this duty, is a man who does not possess the knowledge necessary to enable him to form a correct judgment upon the very point which ought to determine his vote? Such a man can only take a leap in the dark; and is as likely to injure, as to benefit his country and himself, by voting at all.

22. But if, as we see, education and an acquaintance with our political institutions are indispensably necessary, to *enable* the American people suitably to discharge their duty as the guardians of those institutions, these qualifications are no less indispensable, to inspire them with the proper degree of *zeal* in the performance of this duty. Men do not act without motives; and when they do act, their zeal is



proportionate to the strength of the motive by which they are impelled.

23. It is vain, therefore, to expect from the citizens of the United States, that watchful and devoted attention to their political rights which is essential to their preservation, until their value is better understood. Then, and not till then, will Americans *feel* it to be, at once their interest and their duty, to guard those inestimable rights with earnest and unceasing vigilance, and promptly to repel every attempt to invade or impair them. But to understand their value, it is necessary to know what they are, and to be able both to comprehend their nature, and clearly to perceive the consequences of their loss.

24. There is little danger, indeed, that contests for political power will not continue to excite sufficient interest in the minds of a very large portion of the American people, or that those struggles will not be carried on with sufficient earnestness. But what is the nature of that fiery zeal which our elections call forth? does it spring from patriotism and an enlightened love of liberty—and has it the public good for its object? With the more enlightened and honest part of our citizens, such doubtless is its origin and its aim.

25. But with a vast majority, it is nothing but *party spirit*;—a spirit originating in selfish ambition, avarice and envy, and of which patriotism, if

it mingles in it at all, forms the least active ingredient. This spirit is, therefore, the reverse of that which ought to animate the bosoms of our countrymen when their rights and liberties are at stake. Instead of impelling them to take care of their true interests, it too often renders them blind to the public welfare, or heedless of its claims.

26. That party spirit will ever be entirely banished from our country, is not to be expected. There will always be men who prefer the honors and emoluments of office to the welfare of the public. But there is no reason in the nature of things why it should pervade, as it has hitherto done, the great body of our citizens. They have no personal ends to answer, and they are, moreover, at heart, patriotic. And yet we often see them driven almost to phrenzy by its influence. Why is this so? The answer is easy.

27. Not being sufficiently enlightened to be able clearly to discern for themselves the exact nature of the questions at issue between the conflicting parties, they are liable to be strongly excited by artful misrepresentations. Being little accustomed to reasoning coolly and impartially upon public affairs, their passions are, on this account, the more easily inflamed, and when aroused, exert a more unlimited sway. Thus it is, that many of our well-meaning, but unenlightened citizens, are borne on-

ward in their support of particular candidates for office, headlong, and heedless of every thing but the success of the party in whose behalf their passions happen to have been enlisted. Thus it is, that they are continually in danger of becoming, in effect, their own worst enemies.

28. The prevalence of high party spirit is therefore a great evil, not only because it disturbs the peace and harmony of society, and makes men worse, but because it is inconsistent with the duties of patriotism. There is but one means by which it can be checked and controlled; and that is, the diffusion of knowledge. When the great body of American citizens become as highly enlightened as they may, and certainly ought to be, when they understand and justly appreciate their distinguished privileges, they will not fail to defend and maintain them. No longer subject to being misled by others, but accustomed to follow the dictates of enlightened reason, they will scorn to be, what there is otherwise but too much danger of their becoming, the blind instruments of political aspirants.

29. Let every American who loves his country strive to hasten on this happy period. Let him ask himself whether it is fitting—whether it is consistent—whether it is not disgraceful, that ignorance and delusion should be suffered to endure among this youthful, but already great and powerful people; a

nation pre-eminently favored of heaven; blessed with every natural and political advantage—with no external danger to fear—with a vast and fertile country, and a salubrious climate—with a form of government admirably adapted to its genius and character—justly boasting itself the freest, and as yet, thanks to a kind providence, the happiest nation upon earth, and aspiring to the proud distinction of governing itself by wise and equal laws.

30. What say you then, my young countrymen! Will you qualify yourselves to discharge the high duties that await you? Will you take care to know your rights, and firmly and faithfully to maintain them? To learn your obligations and religiously to fulfil them? Do not, I beseech you, prove recreant to your trust. By all that you ought for yourselves to hold most dear: by the glorious memory of your ancestors: by the debt you owe to your common country: by the just claims of the friends of liberty in other lands, who look to America for encouragement and guidance in their struggles for freedom: In the name of the whole family of mankind—I conjure you—do not permit the noble inheritance, won by the heroic valor of your sires, to perish in your hands,—but take care that it shall descend, like the unclouded sun, bright and glorious, to your posterity. Suffer not the fairest prospect the Almighty has ever yet vouchsafed to his creatures on

the earth, to be shrouded in darkness ; thus, not only impiously drawing down unspeakable calamities upon our own country, but quenching, perhaps forever, the flame of liberty, wherever it has been kindled by our example, throughout the world.



## PART II.

### CRIMINAL CODE OF THE STATE OF NEW-YORK, AND OF THE UNITED STATES.

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#### PRELIMINARY REMARKS.

A crime is an act forbidden and declared punishable by the public law. It differs from a mere private injury in this, that in the latter case, the aggressor is liable only to a civil action brought by the party injured, to recover a sum of money called damages, as a compensation for the injury; while crimes are treated as offences against the public, and the offender is prosecuted in the name of the commonwealth, and punished by fine, imprisonment or death, according to the nature of his offence.

Crimes are divided into *felonies and misdemeanors*.

By the Revised Statutes of this state, all offences punishable with death or by imprisonment in a state prison, are declared to be felonies. Those of a minor grade are misdemeanors.

The *right* to inflict punishment for criminal acts is unquestionable. It is essential to the very existence of society, and is founded, therefore, in the right of self preservation. We know by experience, that neither the dictates of conscience, the fear of punishment in a future life, nor both combined, are sufficient to deter men from the commission of crimes; for in all ages, and in all countries, it has been

found necessary to superadd the terrors of human punishment.

It is important to remember that the sole *end* or design of human punishments is the prevention of crime; and that the gratification of a vindictive spirit is therefore no part of their object.

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In the late revision of the laws of this state our criminal code underwent the most thorough and searching examination by able and enlightened men, who, availing themselves of the lights of past experience, labored to bring it to the highest degree of perfection. Considering the high qualifications of the revisers, the just confidence reposed in them by the public, and the deliberation with which the existing amended code was adopted by the legislature, it is not probable that it will be essentially altered for many years to come.

One of the great excellencies of this branch of our written laws, consists in the brevity and precision of language in which it is expressed. On this account, it has been deemed expedient, to a considerable extent, to adhere to the precise phraseology used by the legislature, and not to depart from it, except where greater brevity was attainable without the danger of error or obscurity, or where it was necessary to substitute popular for technical language.

It is proper to add, that a very few of the crimes enumerated in the statute have been omitted on account of their unsuitableness for description in a treatise of this nature.\*

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\* The crimes here referred to are those which relate to unborn children, those which consist in violence offered to females, and the crime against nature. They are treated of in volume 2, of the *Revised Statutes*, at pages 661, 663, 664, 689, 694.



# CHAPTER I.

OF CRIMES AND THEIR PUNISHMENT, AS DEFINED  
AND DECLARED IN THE REVISED STATUTES OF  
THE STATE OF NEW-YORK.

## SECTION I.

OF CRIMES PUNISHABLE WITH DEATH.

By the laws of this state, *three* crimes, and three only, are punishable with death. These are *Treason against the people of this state, Murder, and Arson in the first degree.*

*Treason.*—The following acts constitute treason against the people of this state:

*First,* Levying war against the people of this state within this state:

*Second,* A combination of two or more persons, by force, to usurp the government of this state, or to overturn the same, evidenced by a forcible attempt made within the state, to accomplish such purpose:

*Third,* Adhering to the enemies of this state, while separately engaged in war with a foreign enemy, in cases prescribed in the constitution of the United States, and giving to such enemies aid and comfort, in this state or elsewhere.

[The constitution of the United States declares, that “no state shall, without the consent of congress, engage in war, unless actually invaded, or in such imminent danger as will admit of no delay.” These, therefore, are the cases referred to in the last preceding specification.]

*Murder.*—The killing of a human being, without authority of law, by poison, shooting, stabbing, or any other means, or in any other manner, is either murder, manslaughter, or excusable or justifiable homicide, according to the facts and circumstances of each case.

Such killing, unless it be manslaughter or excusable or justifiable homicide, as herein after explained, is murder, in the following cases:

*First,* When perpetrated from a premeditated design to effect the death of the person killed, or of any human being.

*Secondly,* When perpetrated by any act imminently dangerous to others, and evincing a depraved mind, regardless of human life, although without any premeditated design to cause the death of any particular individual.

*Thirdly,* When perpetrated without any design to effect death, by a person engaged in the commission of any felony.

*Arson in the first degree.*—This crime consists in wilfully setting fire to, or burning, *in the night*

*time*, a dwelling-house in which there is, at the time, some human being.

Every house, prison, jail, or other edifice, which shall have been usually occupied by persons lodging therein at night, is to be deemed a dwelling-house of any person so lodging therein within the meaning of this law: but no ware-house, barn or other out-house, is to be deemed a dwelling-house, or part of a dwelling-house, unless the same be joined to, immediately connected with, or part of a dwelling-house.

The punishment of death must in all cases be inflicted, by hanging the convict by the neck, until he be dead.

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## SECTION II.

### OF OFFENCES AGAINST THE PERSON, PUNISHABLE BY IMPRISONMENT IN A STATE PRISON.

*Manslaughter.*—The killing of one human being by the act, procurement or omission of another, in cases where such killing shall not be murder, as described in the last section, is either justifiable, or excusable homicide; or manslaughter.

Such homicide is *justifiable* when committed by public officers, and those acting by their command, in their aid and assistance, either,

*First*, In carrying into effect a sentence pronounced by some competent court: or,

*Secondly*, When necessarily committed in overcoming actual resistance to the execution of some legal process, or to the discharge of any other legal duty: or,

*Thirdly*, When necessarily committed in retaking felons who have been rescued, or who have escaped: or,

*Lastly*, When necessarily committed in arresting felons fleeing from justice.

Such homicide is also *justifiable*, when committed by *any person*, in either of the following cases:

*First*, When resisting any attempt to murder such person, or to commit any felony upon him or her, or upon or in, any dwelling-house, in which such person shall be: or,

*Secondly*, When committed in the lawful defence of such person, or of his or her husband, wife, parent, child, master, mistress or servant, when there shall be reasonable ground to apprehend a design to commit a felony or to do some other great personal injury, and there shall be imminent danger of such design being accomplished: or,

*Lastly*, When necessarily committed in attempting by lawful ways and means, to apprehend any person for any felony committed; or in lawfully

suppressing a riot; or in lawfully keeping and preserving the peace.

Such homicide is *excusable* when committed,

*First*, By accident and misfortune, in lawfully correcting a child or servant; or in doing any other lawful act by lawful means, with usual and ordinary caution, and without any unlawful intent: or,

*Secondly*, By accident and misfortune, in the heat of passion, upon any sudden and sufficient provocation, or upon a sudden combat, without any undue advantage being taken, and without any dangerous weapon being used, and not done in a cruel or unusual manner.

For justifiable or excusable homicide, no punishment is inflicted.

*Manslaughter in the first degree.*—The killing of any human being, without a design to cause death, by the act, procurement or culpable negligence of any other person, while such other person is engaged in committing, or attempting to commit, any crime or misdemeanor not amounting to felony, in cases where such killing would be murder according to the common law, is manslaughter in the first degree.

Deliberately assisting another in the commission of self-murder, is also manslaughter in the first degree.

The punishment for manslaughter in the first de-

gree, is imprisonment in a state prison, for a term not less than seven years.

*Manslaughter in the second degree.*—The killing of a human being, without a design to cause death, in the heat of passion, but in a cruel and unusual manner, unless under such circumstances as to constitute excusable or justifiable homicide, is manslaughter in the second degree.

Unnecessarily killing another, either while resisting an attempt by such other person to commit any felony, or other unlawful act; or after such attempt has failed, is also manslaughter in the second degree.

The punishment for manslaughter in the second degree, is imprisonment in a state prison for a term not less than four, nor more than seven years.

*Manslaughter in the third degree.*—The killing of another, in the heat of passion, without a design to cause death, by a dangerous weapon, in any case, except such wherein the killing of another is herein above stated to be justifiable or excusable, is manslaughter in the third degree.

The involuntary killing of a human being, by the act, procurement, or culpable negligence of another, while such other person is engaged in committing, or in attempting to commit, a trespass or other injury to private rights, or property, is also manslaughter in the third degree.

If the owner of a mischievous animal, knowing its mischievous disposition, shall wilfully suffer it to go at large, or shall keep it without ordinary care, and such animal, while so at large, or not confined, shall kill any human being, who shall have taken all the precautions which the circumstances may permit, to avoid such animal, such owner shall be deemed guilty of manslaughter in the third degree.

Any person navigating any boat or vessel for gain, who shall wilfully or negligently receive so many passengers, or such a quantity of other lading, that, by means thereof, such boat or vessel shall sink or overset, and thereby any human being shall be drowned, or otherwise killed, shall be deemed guilty of manslaughter in the third degree.

If the captain or any other person having charge of any steam-boat, used for the conveyance of passengers, or if the engineer or other person having charge of the boiler of such boat, or of any other apparatus for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create, or allow to be created, such an undue quantity of steam as to burst or break the boiler, or other apparatus in which it shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking, any person shall be killed; every

such captain, engineer or other person, shall be deemed guilty of manslaughter in the third degree.

If any physician, while in a state of intoxication, shall, without a design to cause death, administer any poison, drug or medicine, or do any other act, to another person, which shall produce the death of such other person, he shall be deemed guilty of manslaughter in the third degree.

The punishment for manslaughter in the third degree, is imprisonment in a state prison, for a term not more than four, nor less than two years.

*Manslaughter in the fourth degree.*—The involuntary killing of another, by any weapon, or by means neither cruel nor unusual, in the heat of passion, in any cases other than such as are in this chapter described as excusable homicide, is manslaughter in the fourth degree.

The punishment for manslaughter in the fourth degree, is imprisonment in a state prison for two years, or in a county jail not exceeding one year, or a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

*Mayhem.*—Every person, who, from premeditated design, evinced by lying in wait for the purpose, or in any other manner; or with intention to kill or commit any felony; shall cut out, or disable the tongue; or, put out an eye; or, slit the lip; or, slit or destroy the nose; or, cut off or disable



any limb or member, of another person, on purpose, shall be punished, upon conviction thereof, by imprisonment in a state prison, for such term as the court shall prescribe, not less than seven years.

*Inveigling and Kidnapping.*—Every person who shall, without lawful authority, forcibly seize and confine any other, or shall inveigle or kidnap any other, with intent, either,

*First,* To cause such other person to be secretly confined or imprisoned in this state against his will: or,

*Secondly,* To cause such person to be sent out of this state, against his will: or,

*Thirdly,* To cause such person to be sold as a slave, or in any way held to service, against his will,

Shall, upon conviction, be punished by imprisonment in a state prison, not exceeding ten years.

Every person who shall be convicted of having been an accessory, after the fact, to any kidnapping or confinement, as above stated and explained, shall be punished by imprisonment in a state prison, not exceeding six years, or in a county jail, not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

[An accessory after the fact, is one who, knowing a crime to have been committed gives assistance to the offender, to hinder his being brought to punishment.]

Every person who shall sell, or in any manner transfer for any term, the services or labor of any black, mulatto or other person of colour, who shall have been forcibly taken, inveigled or kidnapped from this state, to any other state, place or country, shall, upon conviction, be punished by imprisonment in a state prison, not exceeding ten years, or in a county jail, not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

*Decoying Children.*—Every person who shall maliciously, forcibly or fraudulently, lead, take or carry away, or decoy or entice away any child under the age of twelve years, with intent to detain and conceal such child, from its parent, guardian or other person having the lawful charge of such child, shall, upon conviction, be punished by imprisonment in a county jail, not exceeding one year, or by fine, not exceeding five hundred dollars, or by both such fine and imprisonment.

*Abandoning Children.*—If any father or mother of any child under the age of six years, or any other person to whom any such child shall have been confided, shall expose such child in any highway, street, field, house or out-house, with intent wholly to abandon it, he or she, shall, upon conviction, be punished by imprisonment in a state prison

not exceeding seven years, or in a county jail not more than one year.

*Assaults with deadly weapons.*—Every person who shall be convicted of shooting at another, or attempting to discharge any kind of fire arms, or any air-gun, at another, or of any assault and battery upon another, by means of any deadly weapon, or by such other means or force, as was likely to produce death; with the intent to kill, maim, ravish, or rob such other person, or in the attempt to commit any burglary, larceny or other felony, or in resisting the execution of any legal process; shall be punished by imprisonment in a state prison for the term of not more than ten years.

*Administering Poison.*—Every person who shall be convicted of having administered, or having caused and procured to be administered, any poison to any other human being, with intent to kill such being, and which shall have been actually taken by such being, whereof death shall not ensue, shall be punished by imprisonment in a state prison for a term not less than ten years.

*Poisoning Food, Springs, &c.*—Every person who shall mingle any poison with any food, drink or medicine, with intent to kill any human being; or who shall wilfully poison any spring, well or reservoir of water, shall, upon conviction, be punished by imprisonment in a state prison not ex-

ceeding ten years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

*Assault with intent to commit Felony.*—Every person who shall be convicted of an assault, with intent to commit any robbery, burglary, manslaughter, or any other felony, the punishment for which assault is not, in this chapter, already stated, shall be punished by imprisonment in a state prison for a term not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

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### SECTION III.

#### OF OFFENCES AGAINST PROPERTY PUNISHABLE BY IMPRISONMENT IN A STATE PRISON.

*Arson in the second degree.*—[Arson in the *first degree* has already been treated of in the first section of this chapter, and is, as we have seen, punishable with death.] Arson in the *second degree* consists in wilfully setting fire to, or burning any inhabited dwelling-house, *in the day time*, which, if committed in the night time would be arson in the first degree; or,

In wilfully setting fire to, or burning *in the night*

*time*, any shop, ware-house, or other building, not being the subject of arson in the first degree, but adjoining to, or within the curtilage of any inhabited dwelling-house, so that such house shall be endangered by such firing.

[*Curtilage* is an ancient law term which signifies a piece of ground lying near and belonging to a dwelling-house, as a court yard or a back yard.]

The punishment of arson in the second degree is imprisonment in a state prison, for a term not less than ten years.

*Arson in the third degree.*—This crime consists in wilfully setting fire to, or burning *in the day time*, any shop, ware-house or other building, which, if committed in the night time would be arson in the second degree: or,

In wilfully setting fire to, or burning *in the night time*, the house of another, not inhabited at the time; or any house of public worship, or any school-house; or any public building belonging to the people of this state, or to any county, city, town or village, or any building in which shall be deposited the papers of any public officer; or any barn or grist-mill; or any building erected for the manufacture of cotton or woollen goods, or both, or paper, iron, or other fabric; or any fulling-mill, or any ship or vessel: or,

In wilfully burning any building, ship or vessel,

or any goods, wares, merchandize, or other chattel, which shall be at the time insured against loss or damage by fire; with intent to prejudice the insurer, whether the same be the property of the offender or of any other person.

The punishment for arson in the third degree is imprisonment in the state prison for a term not more than ten years, and not less than seven years.

*Arson in the fourth degree.*—This offence consists in wilfully setting fire to or burning *in the day time*, any dwelling-house or building, ship or vessel, which, if committed in the night time, would be arson in the third degree: or,

In wilfully setting fire to, or burning, *in the day or night time*, any saw-mill, any carding machine or building containing the same, any stack of grain of any kind, or any stack of hay, not being the property of the offender; any toll bridge, or any other public bridge: or,

In wilfully setting fire to, or burning, *in the day or night time*, any crop of grain growing or standing in the field, or any nursery or orchard of fruit trees belonging to another; or any fence around any cultivated field belonging to another; or the woods in any town, not belonging to the offender; or any grass or herbage growing on any marshes or other lands, not belonging to the offender.

Arson in the fourth degree is punishable by im-

prisonment in a state prison, for a term not more than seven and not less than two years; or by imprisonment in a county jail not exceeding one year.

**BURGLARY in the first degree.**—This crime consists in breaking into and entering, *in the night time*, the dwelling-house of another, in which there shall be at the time some human being, with intent to commit some crime therein, either,

*First*, By forcibly bursting or breaking the wall, or an outer door, window, or shutter of a window, of such house, or the lock or bolt of such door, or the fastening of such window or shutter: or,

*Secondly*, By breaking in any other manner, being armed with some dangerous weapon; or with the assistance and aid of one or more confederates, then actually present, aiding and assisting: or,

*Thirdly*, By unlocking an outer door by means of false keys, or by picking the lock thereof.

Burglary in the first degree is punishable by imprisonment in a state prison, for a term not less than ten years.

**Burglary in the second degree.**—This crime consists in breaking into any dwelling-house, *in the day time*, with intent to commit some crime therein, by either of the three modes above described; or,

In breaking into any dwelling-house, *in the night time*, with intent to commit a crime, but under such

circumstances as shall not constitute the offence of burglary in the first degree: or,

In entering into the dwelling-house of another, by day or by night, in such manner as not to constitute any burglary in this section already specified, with an intent to commit a crime; or, being in the dwelling-house of another, committing a crime therein, and then, in the night time, breaking an outer door, window, or shutter, or any other part of the house, in order to get out: or,

In breaking an inner door of a dwelling-house, with the intent of committing any crime, after entering such dwelling-house, *in the night time*, through an open outer door or window, or other aperture not made by the person committing the offence: or,

In breaking, *in the night time*, an inner door of a dwelling-house, with the intention of committing any crime, after having been admitted into such house with the consent of the occupant, or being otherwise lawfully therein.

A building not joined to, immediately connected with, and a part of, a dwelling-house, is not to be deemed a dwelling-house within the meaning of the above provisions.

Burglary in the second degree is punished by imprisonment in a state prison for a term not exceeding ten years, nor less than five years.

*Burglary in the third degree.*—This offence con-



sists in breaking and entering, *in the day time or in the night time*, any building within the curtilage of a dwelling-house, but not forming a part of it; or any shop, store, booth, tent, ware-house, or other building, in which any goods, merchandize, or valuable thing shall be kept for use, sale or deposit, with intent to steal therein, or to commit any felony: or,

In breaking and entering into the dwelling-house of another, in the day time, under such circumstances as would have constituted the offence of burglary in the second degree, if committed in the night time.

The punishment for burglary in the third degree is imprisonment in a state prison for a term not exceeding five years.

**FORGERY in the first degree.**—Forgery in the first degree consists in forging, counterfeiting, or falsely altering, with intent to defraud, any will of real property, or any deed or other instrument purporting to convey or in any way affect any interest in real property; or any certificate or endorsement of the acknowledgment by any person of any deed or other instrument which by law may be recorded; or any certificate of the proof of any deed, will or other instrument which by law may be recorded: or,

In forging, counterfeiting, or falsely altering, any

certificate or other public security, issued or purporting to have been issued under the authority of this state, by virtue of any law thereof,—by virtue of which certificate or other public security the payment of money shall be promised, or the receipt of any money, goods or valuable thing, shall be acknowledged; or any certificate of any share, right or interest in any public stock, created by virtue of any law of this state, issued or purporting to have been issued by any public officer,—or any other evidence of any debt or liability of the people of this state, issued or purporting to have been issued by any public officer; or any endorsement or other instrument purporting to transfer the right or interest of any holder of any such certificate, public security, certificate of stock, evidence of debt, or liability, or of any person entitled to such right or interest; with intent to defraud the people of this state, or any public officer thereof, or any other person.

The punishment of forgery in the first degree is imprisonment in a state prison for a term not less than ten years.

*Forgery in the second degree.*—This crime consists in forging or counterfeiting the great or privy seal of this state; the seal of any public office authorized by law; the seal of any court of record, including surrogates' seals; or the seal of any body corporate, duly incorporated by or under the laws of this

state; or in falsely making, forging or counterfeiting; any impression purporting to be an impression of such seal, with intent to defraud: or,

In falsely altering, destroying, corrupting or falsifying, any record of any will, conveyance or other instrument, the record of which shall by law be evidence; or, any record of any judgment in a court of record, or any enrolment of any decree of a court of equity; or, the return of any officer, court or tribunal, to any process of any court, with intent to defraud: or,

In falsely making, forging or altering, any entry in any book of records; or any instrument purporting to be any record, or return to process, such as is above specified, with intent to defraud: or,

In counterfeiting any gold or silver coins which shall be at the time current by custom or usage within this state: or,

In making, or engraving, or causing or procuring to be made or engraved, any plate in the form or similitude of any promissory note, bill of exchange, draft, check, certificate of deposit, or other evidence of debt, issued by any incorporated bank in this state, or by any bank incorporated under the laws of the United States, or in any state or territory thereof, or under the laws of any foreign country or government, without the authority of such bank: or,

In having or keeping in possession, any such plate, without the authority of such bank, with the intent of using or having the same used, for the purpose of taking therefrom any impression to be passed, sold or uttered: or,

In having or keeping in custody or possession, without the authority of such bank, any impression taken from such plate, with intent to have the same filled up and completed, for the purpose of being passed, sold or uttered: or,

In making or causing to be made, or having in custody or possession, any plate upon which shall be engraved any figures or words, which may be used for the purpose of falsely altering any evidence of debt issued by any such incorporated bank, with the intent of having the same used for such purpose: or,

In selling, exchanging or delivering for any consideration, any forged or counterfeited promissory note, check, bill, draft or other evidence of debt or engagement, for the payment of money absolutely, or upon any contingency, knowing the same to be forged or counterfeited, with intention to have the same uttered or passed: or,

In offering any such note or other instrument for sale, exchange or delivery for any consideration, with the like knowledge and intention: or,

In receiving any such note or other instrument

upon a sale, exchange or delivery, for any consideration, with the like knowledge and intention: or,

In having in possession any forged, altered or counterfeit negotiable note, bill, draft or other evidence of debt, issued or purporting to have been issued, by any corporation or company duly authorized for that purpose by the laws of the United States, or of this state, or of any other state, government or country, the forgery of which is herein before declared punishable, knowing the same to be forged, altered or counterfeited; with intention to utter the same as true or as false, or cause the same to be so uttered, with intent to injure or defraud: and,

If any officer authorized to take the proof or acknowledgment of any conveyance of real estate, or of any other instrument which by law may be recorded, shall wilfully and falsely certify that any such conveyance or instrument was acknowledged by any party thereto, when in truth no such acknowledgment was made; or that any such instrument was proved, when in truth no such proof was made; he shall, upon conviction, be adjudged guilty of forgery in the second degree.

The punishment for forgery in the second degree is, imprisonment in a state-prison for a term not more than ten, and not less than five years.

*Forgery in the third degree.*—This crime con-

sists in falsely making, altering, forging or counterfeiting, with intent to injure or defraud, any instrument in writing, being, or purporting to be any process issued by any competent court, magistrate or officer; or being, or purporting to be, any pleading or proceeding filed or entered in any court of law or equity; or being or purporting to be, any certificate, order or allowance, by any competent court or officer; or being, or purporting to be, any license or authority authorized by any statute; or any instrument or writing, being, or purporting to be, the act of another, by which any pecuniary demand or obligation shall be, or shall purport to be, created, increased, discharged or diminished, or by which any rights or property whatever, shall be, or purport to be, transferred, conveyed, discharged, diminished or in any manner affected, the punishment for which has not in this section already been specified; by which false making, forging, altering or counterfeiting, any person may be affected, bound, or in any way injured in his person or property: or,

In making, with intent to defraud, any false entry, or with like intent, falsely altering any entry made, in any book of accounts, kept in the office of the comptroller of this state, or in the office of the treasurer, or of the surveyor-general, or of any county treasurer, by which any demand or ob-

ligation, claim, right or interest, either against, or in favor of, the people of this state, or any county or town, or any individual, shall be, or shall purport to be discharged, diminished, increased, created, or in any wise affected: or,

In making, with intent to defraud, any false entry, or, with like intent, falsely altering any entry made, in any book of accounts kept by any monied corporation within this state, or in any book of accounts kept by such corporation, or its officers, and delivered or intended to be delivered, to any person dealing with such corporation, by which any pecuniary obligation, claim or credit, shall be, or shall purport to be, discharged, diminished, increased, created or in any manner affected: or,

In counterfeiting any gold or silver coin of any foreign government or country, with the intent of exporting the same, to injure or defraud any foreign government or the subjects thereof.

The punishment for forgery in the third degree is, imprisonment in a state-prison for a term not exceeding five years.

*Forgery in the fourth degree.*—This offence consists in having in possession any forged or counterfeited instrument, the forgery of which is above declared to be punishable, except negotiable notes, bills, drafts or other evidences of debt, issued or purporting to have been issued, by some corpo-

ration or company, duly authorized for that purpose by law, (in which cases, as we have seen, the offence would be forgery in the *second* degree,) knowing the same to be forged, counterfeited or falsely altered, with intention to injure or defraud, by uttering the same as true or false, or by causing the same to be so altered: or,

In having in possession any counterfeit of any gold or silver coin, which shall be at the time current in this state, knowing the same to be counterfeited, with intention to defraud or injure by uttering the same as true or false, or by causing the same to be so uttered: or,

In uttering and publishing as true, with intent to defraud, any forged, altered, or counterfeited instrument, or any counterfeit gold or silver coin, the forging, altering or counterfeiting of which is, in this section before declared to be an offence, knowing such instrument or coin to be forged, altered or counterfeited: provided it shall appear, upon the trial of the indictment, that the accused received such forged or counterfeited instrument or coin, of another, in good faith and for a valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited.

The punishment for forgery in the fourth degree is, imprisonment in a state-prison for a term not ex-



ceeding two years, or in a county jail for a term not exceeding one year.

*General Provisions concerning forgery.*—If, in the last mentioned case, it shall *not* appear upon the trial, that the accused received such forged or counterfeited instrument or coin, in good faith and for a valuable consideration, without any circumstances to justify a suspicion of its being forged or counterfeited, he shall suffer the same punishment as for forging, altering or counterfeiting the instrument or coin so uttered.

If any one shall, with intent to injure or defraud, make any instrument in his own name, intended to create, increase, discharge, defeat or diminish any pecuniary obligation, right or interest, or to transfer or affect any property whatever, and shall utter or pass it under pretence that it is the act of another, who bears the same name; he shall, upon conviction, be adjudged guilty of forgery in the same degree, as if he had forged the instrument of a person bearing a different name from his own.

The total erasure or obliteration of any instrument or writing, with intent to defraud, shall be deemed forgery, in the same manner and in the same degree, as the false alteration of any part of such instrument or writing.

When different parts of several genuine instruments, shall be so placed or connected together, as

to produce one instrument, with intent to defraud, the same shall be deemed forgery in the same manner and in the same degree, as if the parts so put together were falsely made or forged.

Every instrument partly printed and partly written, or wholly printed, with a written signature thereto; and every signature of an individual, firm or corporate body, or of any officer of such body, and every writing purporting to be such signature; shall be deemed a writing and a written instrument, within the meaning of the laws relating to the crime of forgery.

The false making, forging or counterfeiting of any evidence of debt, issued, or purporting to have been issued, by any corporation having authority for that purpose, to which shall be affixed, the pretended signature of any person as agent or officer of such corporation; shall be deemed forgery in the same degree and in the same manner, as if such person was, at the time, an officer or agent of such corporation: notwithstanding such person may never have been an officer or agent of such corporation, or notwithstanding there never was any such person in existence.

#### FALSELY PERSONATING ANOTHER, AND CHEATS.

Every person who shall falsely represent or personate another, and in such assumed character shall marry another; or, become bail or surety for any

party in any proceeding, civil or criminal, before any court or officer authorized to take such bail or surety; or, confess any judgment; or, acknowledge the execution of any conveyance of real estate, or of any other instrument, which by law may be recorded; or, do any other act in the course of any suit, proceeding or prosecution, whereby the person so represented may be made liable in any event, to the payment of any debt, damages, costs, or sum of money, or his rights or interests may in any manner be affected; shall, upon conviction, be punished by imprisonment in a state-prison for a term not exceeding ten years. But no indictment for marrying another in an assumed character, shall be found, unless upon the complaint of the injured party, and within two years after the perpetration of the offence.

Every person who shall falsely represent or personate another, and in such assumed character, shall receive any money or valuable property of any description, intended to be delivered to the individual so personated, shall, upon conviction, be punished in the same manner, and to the same extent, as for feloniously stealing the money or property so received.

Every person who shall fraudulently produce an infant, falsely pretending it to have been born of parents whose child would be entitled to a share of

any personal estate, or to inherit any real estate, with the intent of intercepting the inheritance of any such real estate, or the distribution of any such personal property, from any person lawfully entitled thereto, shall upon conviction, be punished by imprisonment in a state-prison not exceeding ten years.

Every person to whom an infant under the age of six years, shall be confided, for nursing, education or any other purpose, who shall, with intent to deceive any parent or guardian of such child, substitute and produce to such parent or guardian, another child in the place of the one so confided, shall, upon conviction, be punished by imprisonment in a state-prison not exceeding seven years.

Every person, who, with intent to cheat or defraud another, shall designedly, by color of any false token or writing, or by any other false pretence, obtain the signature of any person to any written instrument, or obtain from any person any money, personal property, or valuable thing; upon conviction thereof, shall be punished by imprisonment in a state-prison not exceeding three years, or in a county jail not exceeding one year, or by fine not exceeding three times the value of the money, property or thing, so obtained, or by both such fine and imprisonment.

If the false token by which money or other property shall be obtained as above specified, be a note

purporting to have been issued by any banking company or monied corporation, not in existence; the person convicted of such cheat, may be punished by imprisonment in a state-prison not exceeding seven years.

*ROBBERY in the first degree.*—This crime consists in feloniously taking the personal property of another from his person, or in his presence, against his will, by violence to his person, or by putting him in fear of some immediate injury to his person.

The punishment for this crime is, imprisonment in a state-prison for a term not less than ten years.

*Robbery in the second degree.*—This crime consists in feloniously taking the personal property of another in his presence, or from his person, which shall have been delivered or suffered to be taken, through fear of some injury to his person or property, or to the person of any relative or member of his family, threatened to be inflicted at some different time, which fear shall have been produced by the threats of the person so receiving or taking such property.

The punishment for this crime is, imprisonment in a state-prison for a term not exceeding ten years.

*Sending threatening letters.*—Knowingly sending or delivering, or writing and handing over to another for the purpose of being sent or delivered, any letter or writing, signed or unsigned, or signed

with a fictitious name, or with any other mark, containing a threat to accuse any person of any crime, or do any injury to the person or property of any one, with a view to extort money or property belonging to another, is declared by the Revised Statutes, to amount to *an attempt to rob*, and is punishable by imprisonment in a state-prison not exceeding five years.

If any clerk or servant of any private person, or of a co-partnership, (except apprentices and persons within the age of eighteen years,) or if any officer, agent, clerk, or servant of any incorporated company, shall embezzle or convert to his own use, or take, make way with, or secrete, with intent to embezzle or convert to his own use, without the assent of his master or employers, any money, goods, rights in action, or other valuable security or effects whatever, which shall have come into his possession, or under his care by virtue of such employment or office, and which shall belong to any other person, shall, upon conviction, be punished in the manner prescribed by law for feloniously stealing property of the value of the articles so embezzled, taken or secreted, or of the value of any sum of money payable and due upon any rights of action so embezzled.

Any person who shall buy, or in any way receive any money, goods, right in action, or any

valuable security or effects whatever, knowing the same to have been so embezzled, taken or secreted, as above stated, is punishable in the same manner and to the same extent as the person guilty of the embezzlement.

*Grand Larceny.*—This crime consists in feloniously taking and carrying away, or, in other words, in stealing, the personal property of another, of the value of more than twenty-five dollars.

The punishment for this crime, in ordinary cases, is imprisonment in a state-prison, for a term not exceeding five years; but if the larceny be committed in a dwelling-house, or in a ship or other vessel, the term of imprisonment may be extended by the court to eight years; and if such larceny be committed by stealing in the night time, from the person of another, to ten years.

If the property stolen be any written legal instrument, the amount of money or value of other property secured or effected thereby, shall be deemed the value of the article so stolen.

If any person shall sever from the land of another, any produce growing thereon, of the value of more than twenty-five dollars, or sever from any building, or from any gate, fence or other railing or enclosure, any part thereof, or any material of which it is formed, of the like value, and take and convert the same to his own use, with intent to

steal the same, he shall be deemed guilty of grand larceny.

*Stealing of Records and other Papers.*—Whoever shall be convicted of having stolen and carried away, any record, paper or proceeding of a court of justice, filed or deposited with any clerk or officer of such court, or any paper, document or record filed or deposited in any public office, or with any judicial officer, shall be adjudged guilty of larceny, without reference to the value of the record, paper, document or proceeding so stolen; and shall be punished by imprisonment in a state-prison, not exceeding five years, or in the county jail not exceeding one year, or by fine not exceeding five hundred dollars, or by both such fine and imprisonment.

Every officer having the custody of any record, paper or proceeding specified in the last section, who shall steal or fraudulently take away or withdraw, or destroy any document or paper, filed or deposited with him, shall, upon conviction, be punished by imprisonment in a state-prison, for a term not exceeding five years.

*Buying or receiving stolen property, knowing the same to have been stolen.*—This offence, whatever may be the value of the property, is punishable by imprisonment in a state-prison, for a term not exceeding five years, or in a county jail not exceed-



ing six months, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

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## SECTION IV.

### OF OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

*Perjury.*—This crime consists in wilfully and corruptly swearing or affirming falsely, to any material matter, upon any oath or affirmation, taken before any court, tribunal or officer of this state, authorized by law to administer such oath.

The punishment for this offence is as follows:

For perjury committed on the trial of any indictment for a capital offence, or for any other felony, imprisonment in a state-prison for a term not less than ten years :

For perjury committed on any other judicial trial or inquiry, or in any other case, for a term not exceeding ten years :

And no person convicted of perjury can ever thereafter be received as a witness, while the judgment against him stands unreversed.

*Subornation of perjury.*—This offence consists in corruptly procuring another to commit the crime of perjury ; and the punishment for it is the same as that for perjury.

*Attempting*, by the offer of any reward, to induce another to commit perjury, is also a crime, punishable by imprisonment in a state-prison not exceeding five years.

*Bribery*.—Every person who shall promise, offer or give to the governor or lieutenant-governor, or to any member of the senate or assembly of this state; to any commissioner of the land office, or of the canal fund, or any canal commissioner; to the comptroller, surveyor-general, secretary of state or attorney-general; to any judge of any court of record, or to any judicial officer whatever; any money, goods, right in action or other property, with intent to influence his vote, opinion or judgment, on any matter pending, or which may by law be brought before him in his official capacity, shall, upon conviction, be imprisoned in a state-prison not exceeding ten years, or shall be fined not exceeding five thousand dollars, or both, in the discretion of the court.

If any officer above named shall accept any such gift, offer or promise, under any agreement, that his vote, opinion or judgment shall be given in any particular manner, or upon any matter pending or which may by law be brought before him in his official capacity, he shall, upon conviction, be forever disqualified from holding any public office, trust or appointment, under the constitution or laws

of this state; shall forfeit his office, and shall be punished by imprisonment in a state-prison not exceeding ten years, or by fine not exceeding five thousand dollars, or both, in the discretion of the court.

If any juror, arbitrator or referee, shall take from any person, any thing, to give his verdict, award or report, or shall receive from a party to the suit in which he has been drawn, summoned, chosen or appointed, any gratuity or gift whatever, he shall, upon conviction, be punished by imprisonment in a state-prison, not exceeding five years, or in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment.

[*Arbitrators* are persons chosen and agreed upon by the parties themselves to settle any matter of difference between them. *Referees* are persons appointed by the court in which a suit is pending, to determine such suit.]

Giving or offering a bribe to a juror, referee or arbitrator, is punishable by imprisonment in a state-prison, not exceeding five years, or in a county jail, not more than one year, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment.

*Aiding prisoners to escape.*—Every person who shall convey into a state-prison, jail or other place of confinement, any disguise, instrument, arms or

other thing, for the purpose of facilitating the escape of any prisoner lawfully imprisoned for any *felony*, whether such escape be effected, or attempted, or not; and every person who shall, by any means whatever, aid and assist any such prisoner; or, who shall forcibly rescue any prisoner held in legal custody upon any criminal charge; shall, upon conviction, be punished by imprisonment in a state-prison, not exceeding ten years.

When the prisoner is confined for an offence which is *not a felony*, aiding or attempting to aid him to escape, is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

But if the aid and assistance be given by a prisoner confined for any crime in the same prison, with the intent of facilitating his own escape, the punishment of such prisoner shall not exceed that prescribed by law, as hereinafter mentioned, for his own escape.

Aiding or assisting any prisoner in escaping, or in attempting to escape, from the custody of any officer or person who shall have the lawful charge of such prisoner, upon any criminal charge, is punishable by imprisonment in a county jail not exceeding one year, or by fine not exceeding two

hundred and fifty dollars, or by both such fine and imprisonment.

*Violation of official duties by Sheriffs and other officers.*—If any sheriff, jailer, coroner, marshal or constable shall, either, wilfully and corruptly refuse to execute any lawful process directed to them, or any of them, requiring the apprehension or confinement of any person charged with a criminal offence; or, shall wilfully and corruptly omit to execute such process, by which such person shall escape; or, shall wilfully refuse to receive in any jail under his charge, any offender lawfully committed to such jail, and ordered to be confined therein, on any criminal charge or conviction, or on any lawful process whatever; or, shall wilfully suffer any offender lawfully committed to his custody, to escape and go at large; or, shall receive any gratuity or reward, or any security or engagement for any gratuity or reward, to permit or connive at the escape of any prisoner in his custody, whether such escape be attempted, or effected, or not; he shall, upon conviction, be punished by imprisonment in a county jail not exceeding one year, or by fine not exceeding one thousand dollars, or by both such fine and imprisonment; and every such sheriff, coroner, marshal or constable, shall, moreover, forfeit his office, and shall be forever disqualified to hold any office or place of trust, honor .

or profit, under the laws or constitution of this state.

If any prisoner, confined in a state-prison for any term less than for life, shall break such prison and escape, or shall, by force and violence to any person, attempt to escape from thence, he shall, upon conviction, be punished by imprisonment in such prison, for a term not exceeding five years, to commence from and after the expiration of the original term of his imprisonment.

If any person, confined in a county jail, upon any conviction for a criminal offence, shall break such jail and escape from thence, he shall, upon conviction, be punished by imprisonment in a state-prison not exceeding two years, or in a county jail not exceeding one year, to commence from the expiration of his former sentence.

Every person lawfully imprisoned in a county jail, for any cause whatever, who shall forcibly break the prison, with intent to escape therefrom, or shall attempt, by any force or violence, to escape from such prison, although no escape be effected, shall, upon conviction, be punished by imprisonment in a county jail not exceeding one year.

## SECTION V.

OF OFFENCES AGAINST THE PUBLIC PEACE AND PUBLIC MORALS, AND OTHER MISCELLANEOUS OFFENCES, PUNISHABLE BY IMPRISONMENT IN A STATE-PRISON.

*Duelling, and challenges to fight.*—Every person who shall fight a duel with any deadly weapon, although no death ensue, shall upon conviction, be punished by imprisonment in a state-prison for a term not exceeding ten years.

Every person who shall challenge another to fight such duel, or who shall send or deliver any written or verbal message, purporting or intended to be such challenge; or who shall accept any such challenge or message; or who shall knowingly carry or deliver any such challenge or message; or who shall be present at the time of fighting any duel with deadly weapons, either as second, aid or surgeon; or who shall advise or give any countenance or assistance to such duel; shall, upon conviction, be punished by imprisonment in a state-prison for a term not exceeding seven years.

Every person offending against either of the above provisions, shall be a competent witness against any other person offending in the same transaction, and may be compelled to appear and give evidence before any grand jury, or in any court, in the same manner as other persons; but

the testimony so given, shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.

Every person convicted of actually fighting a duel with any deadly weapon, shall be incapable of holding, or being elected or appointed to, any office, place or post of trust or emolument, civil or military, under the constitution and laws of this state.

If any inhabitant of this state shall leave the state for the purpose of eluding the operation of the foregoing provisions respecting duelling, with the intent of giving or receiving any challenge, and shall give or receive any such challenge, or shall aid and abet in giving and receiving the same, without this state, he shall be deemed as guilty, and shall be subject to the like punishment as if the offence had been committed within this state; and may be indicted and brought to trial in any county of this state, which shall be designated by the governor for that purpose, and where, in his opinion, the evidence can be conveniently obtained and produced.

Every such offender may plead a former conviction or acquittal for the same offence, in another state or county; and if such plea be admitted or established, it shall be a bar to any further or other



proceedings against such person, for the same offence.

*Unlawful marriages.*—Every person having a husband or wife living, who shall marry any other person, whether married or single, shall, except in the cases specified in the next paragraph, be adjudged guilty of bigamy; and, upon conviction, shall be punished by imprisonment in a state-prison for a term not exceeding five years.

But if the husband or wife, by a former marriage, of the person so marrying, shall have been absent for five successive years, without being known by such person, within that time, to be living: or, if the husband or wife of such person shall have absented himself or herself from such person, and shall have been continually remaining without the United States, for the space of five years together; or, if the former marriage of such person shall have been dissolved by the decree of a competent court, for some cause other than the adultery of such person; or, shall have been pronounced void by the sentence or decree of a competent court, on the ground of the nullity of the marriage contract; or, shall have been annulled by the decree of a competent court, on the ground that such person was within the age of legal consent at the time of such former marriage; or, if the husband or wife of such person by such former marriage,

shall have been sentenced to imprisonment for life; in each of these cases, the person so marrying, shall not be adjudged guilty of bigamy, nor be liable to criminal punishment, by reason of such marriage.

[The age of legal consent to the marriage contract, is, in males, seventeen years, and in females, fourteen years.]

If any *unmarried* person shall, knowingly, marry the husband or wife of another, in any case in which such husband or wife would be punishable according to the foregoing provisions, such person, upon conviction, shall be imprisoned in a state-prison not more than five years, or in a county jail not more than one year, or shall be fined not more than five hundred dollars, or shall be subject to both such fine and imprisonment, in the discretion of the court.

Persons within the degrees of consanguinity, within which, marriages are declared by law to be incestuous and void, who shall intermarry with each other, shall, upon conviction, be punished by imprisonment in a state-prison for a term not exceeding ten years.

[The persons above referred to, as those between whom marriages are void by reason of consanguinity, are parents and children, grand-parents and grand-children of every degree, and brothers and sisters of the half as well as of the whole blood.]

*Violating the grave.*—Every person who shall

remove the dead body of any human being from the grave or other place of interment, for the purpose of selling the same, or for the purpose of dissection, or from mere wantonness, shall, upon conviction, be punished by imprisonment in a state-prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment; and every person who shall purchase or receive the dead body of any human being, knowing the same to have been so disinterred, shall be subject to the like punishment.

Every person who shall open a grave or other place of interment, with intent to remove the dead body of any human being, for the purpose of selling the same, or for the purpose of dissection; or, for the purpose of stealing the coffin or any part thereof, or the vestments or other articles interred with any dead body, shall, upon conviction, be punished by imprisonment in a state-prison not exceeding two years, or in a county jail not exceeding six months, or by fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

*Poisoning cattle.*—Wilfully administering poison to horses, cattle or sheep, or maliciously exposing any poisonous substance, with intent that the same should be taken or swallowed by any horse,

cattle or sheep, is an offence against the laws of this state, punishable by imprisonment in a state-prison not exceeding three years, or in a county jail not exceeding one year, or by a fine not exceeding two hundred and fifty dollars, or by both such fine and imprisonment.

*Compounding offences.*—Every person having a knowledge of the actual commission of any offence punishable by death, or by imprisonment in a state-prison for life, who shall take any money or property of another, or any gratuity or reward, or any engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such crime, or to abstain from any prosecution therefor, or to withhold any evidence thereof, shall, upon conviction, be punished by imprisonment in a state-prison, not exceeding five years, or in a county jail not exceeding one year: and every person who shall be guilty of a like offence with respect to any offence punishable in a state-prison for any other term than for life, shall, upon conviction, be punished by imprisonment in a state-prison not exceeding three years, or in a county jail not exceeding six months.

## SECTION VI.

OF OFFENCES PUNISHABLE BY IMPRISONMENT IN  
A COUNTY JAIL AND BY FINES.

[In order to avoid repetition, it is proper here to state, that the punishment prescribed by law for each of the numerous offences described in this section, (except in the few cases in which a different punishment is provided and herein stated,) is imprisonment in a county jail not exceeding one year, or a fine not exceeding two hundred and fifty dollars, or both.]

*Petit larceny.*—This offence consists in stealing, taking and carrying away the personal property of another, of the value of twenty-five dollars or under. It is punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding one hundred dollars, or by both such fine and imprisonment.

*Attempt to extort.*—Threatening, either in words or by writing, to accuse another of any offence, with intent thereby to extort any property, or any pecuniary benefit whatever, is a misdemeanor.

*Fraudulent conveyances.*—Giving or taking a conveyance, assignment or mortgage of, or other incumbrance upon, any property either real or personal, for the purpose of defrauding, hindering or delaying others; or, being privy to any such conveyance, &c. and putting the same into use, as having been made in good faith, is a misdemeanor.

*Concealment by insolvent debtors.*—If an insol-

vent debtor, applying for a discharge from his debts; or, for the exoneration of his person from imprisonment; or, for a discharge from imprisonment; shall wilfully conceal any part of his property, or any books or writings relative thereto; or, shall conceal, and not disclose to the court or officer before whom his petition may be pending, any debts or demands which he may have collected, or any transfer of his property which he may have made, such debtor shall, upon conviction, be adjudged guilty of a misdemeanor.

*Buying lands in suit.*—Taking a conveyance of land, or of any interest therein, from any person not being in possession thereof, while such lands are the subject of controversy by suit in any court, with a knowledge of the pendency of such suit, and that the grantor is not in possession of such lands, is a misdemeanor.

*Buying or selling lands when the grantor is out of possession.*—It is also a misdemeanor, to buy or sell, or in any manner to procure, make or take any promise or covenant to convey any pretended right or title to any lands, unless the person making the conveyance, or the promise or covenant to convey, shall have been in possession, or he and those by whom he claims shall have been in possession of such lands, or of the reversion or remainder thereof, or shall have taken the rents and profits thereof

for, at least, the space of one year before the time of such conveyance, promise or covenant.

These two last provisions do not, however, apply to a mortgage executed by a person really having a just title to lands; nor to any conveyance of lands to any person who is, at the time, in the lawful possession thereof.

*Conspiracy.*—This offence can only be committed by two or more persons acting in concert. It consists in conspiring, that is, in confederating or plotting together, to commit any offence; or, falsely and maliciously to indict another for any offence, or to procure another to be charged or arrested for any such offence; or, falsely to maintain a suit; or, to cheat and defraud any person of any property by any means which are in themselves criminal; or by any means which, if executed, would amount to a cheat, or to obtaining money or property by false pretences; or, to commit any act injurious to the public health, to public morals, or to trade or commerce; or, for the perversion or obstruction of justice or the due administration of the laws.

No *agreement*, except to commit a felony upon the person of another, or to commit arson or burglary, shall be deemed a conspiracy, unless some *act* beside such agreement, be done to effect the object thereof, by *one or more* of the parties to such agreement.

*False imprisonment and illegal seizure of property.*—If any sheriff or other officer, or any person pretending to be an officer, shall, under the pretence or colour of any process or other legal authority, arrest any person, or detain him against his will, or seize or levy upon any property, or dispossess any one of any lands or tenements, without due or legal process or other lawful authority therefor; he shall, upon conviction, be adjudged guilty of a misdemeanor.

*Compounding offences.*—Every person having a knowledge of the actual commission of any offence, punishable by imprisonment in a county jail, or by fine, or any misdemeanor or violation of any statute for which any pecuniary or other penalty or forfeiture is or shall be prescribed, who shall take any reward, or engagement or promise therefor, upon any agreement or understanding, express or implied, to compound or conceal any such offence or misdemeanor, or to abstain from any prosecution therefor, or to withhold any evidence thereof; shall, upon conviction, be adjudged guilty of a misdemeanor.

*Racing in certain places.*—Every person who shall be concerned in any racing, running or other trial of speed, between any horses or other animals, within one mile of the place where any court shall



be actually sitting, shall, upon conviction, be adjudged guilty of a misdemeanor.

*Criminal contempt of courts of record.*—This offence consists either in disorderly, contemptuous, or insolent behaviour, committed during the sitting and in the immediate presence of any court of record, and directly tending to interrupt its proceedings, or to impair the respect due to its authority; or, in any breach of the peace, noise, or other disturbance, directly tending to interrupt its proceedings, or to impair the respect due to its authority; or, in wilful disobedience of any process or order lawfully issued or made by such court; or, in resistance wilfully offered by any person to the lawful order or process of the court; or, in the contumacious and unlawful refusal of any person to be sworn as a witness; and when so sworn, the like refusal to answer any legal or proper interrogatory; or, in the publication of a false, or grossly inaccurate report of its proceedings.\*

*Malicious trespass.*—Every person who shall wilfully commit any trespass, by,

1. Cutting down or destroying any kind of wood

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\* Persons guilty of any of the acts of contempt above enumerated, besides being punishable by indictment for a misdemeanor, are also punishable by order of the court in which the contempt is committed, by fine not exceeding two hundred and fifty dollars, or by imprisonment in the jail of the county where the court is sitting, for a term not exceeding thirty days, or both, in the discretion of the court.

or timber, standing or growing upon the lands of another, or upon lands belonging to the people of this state: or,

2. Carrying away any kind of wood or timber that may have been cut down, and that may be lying on such lands: or,

3. Maliciously cutting down, lopping, girdling, or otherwise injuring, any fruit, or ornamental, or shade trees: or,

4. Maliciously severing from the freehold, any produce thereof, or any thing attached thereto: or,

5. Severing and carrying away from any freehold, any property or thing attached thereto, of the value of twenty-five dollars or less, under such circumstances as would render the trespass a larceny, if the thing so severed or carried away was personal property,

Shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by imprisonment in a county jail not exceeding six months, or by fine not exceeding one hundred and fifty dollars, or by both such fine and imprisonment.

*Attempts to influence Jurors, Arbitrators or Referees.*—Every attempt improperly to influence any juror, arbitrator or referee, in relation to any cause or matter pending in the court for which such juror is drawn or summoned, or pending before such arbitrator or referee, is a misdemeanor.

*Improper conduct in Jurors.*—If any person drawn, summoned or sworn, as a juror in any case, shall make any promise or agreement to give a verdict for or against any party to a civil suit; or shall receive any paper, evidence or information from any one in relation to any matter or cause for the trial of which he shall be sworn, without the authority of the court or officer, before whom such juror shall be summoned, and without immediately disclosing the same to such court or officer; he shall, upon conviction, be adjudged guilty of a misdemeanor.

*Improper conduct in drawing Jurors.*—Any unfair, partial or improper conduct in drawing or making a list of jurors to attend any court, by any person whose duty it is to assist at such drawing, is a misdemeanor.

*Fraudulent voting.*—Voting more than once at the same election, for the same candidate for the same office, or for different candidates for the same office, either in the same or in a different town or ward, is a misdemeanor.

*Posting, &c., for not fighting duels.*—Posting another for not fighting a duel, or for not sending or accepting a challenge to fight a duel; or in writing or in print, using any reproachful or contemptuous language to or concerning any one, for not sending or accepting a challenge to fight a du-

el, or for not fighting a duel, is a misdemeanor.

*Prescribing medicines in a state of intoxication.*—If any physician or other person, while in a state of intoxication, shall prescribe any poison, drug or medicine, to another person, which shall endanger the life of such person, he shall, upon conviction, be adjudged guilty of a misdemeanor.

*Selling poisons without a label.*—Every apothecary, druggist or other person, who shall sell and deliver any arsenic, corrosive sublimate, prussic acid, or any other substance or liquid usually denominated poisonous, without having the word "*Poison,*" written or printed upon a label attached to the phial, box or parcel, in which the same is sold; or who shall sell and deliver any tartar emetic, without having the true name thereof written or printed, upon a label attached to the phial, box or parcel, containing the same; shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars.

*Overloading Vessels.*—Every person navigating any boat or vessel for gain, who shall wilfully receive so many passengers, or such a quantity of other lading, on board such boat or vessel, that by means thereof, such boat or vessel shall sink or overset, and the life of any human being shall be

endangered thereby; shall, upon conviction, be adjudged guilty of a misdemeanor.

*Mismanagement of Steam-boats.*—If the captain or any other person having charge of a steam-boat used for the conveyance of passengers; or if the engineer or other person having charge of the boiler of such boat, or of any apparatus therein for the generation of steam, shall, from ignorance or gross neglect, or for the purpose of excelling any other boat in speed, create or allow to be created, such an undue quantity of steam, as to burst or break the boiler or other apparatus in which such steam shall be generated, or any apparatus or machinery connected therewith, by which bursting or breaking, human life shall be endangered, every such captain, engineer or other person, shall be adjudged guilty of a misdemeanor.

*Cruelty to animals.*—Every person who shall maliciously kill, maim or wound any horse, ox or other cattle, or any sheep belonging to another, or shall maliciously and cruelly beat or torture any such animal, whether belonging to himself or another, shall, upon conviction, be adjudged guilty of a misdemeanor.

*Opening, &c., sealed letters.*—If any person shall wilfully open, or read, or cause to be read, any sealed letter, not addressed to himself, without being authorized so to do, either by the writer of such

letter, or by the person to whom it shall be addressed, he shall, upon conviction, be adjudged guilty of a misdemeanor, and shall be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding one month: and if any person shall maliciously publish the whole or any part of such letter, without the authority of the writer thereof, or of the person to whom the same shall be addressed, knowing the same to have been so opened, he shall, upon conviction, be adjudged guilty of a misdemeanor, and be punished in like manner.

[It is, however, provided by the Revised Statutes, that the foregoing provisions shall not extend to any breaking open of letters, which shall be punishable by the laws of the United States. The laws referred to are those which congress have passed, or may pass, in pursuance of the power conferred by the constitution of the United States, upon congress, to "establish post-offices and post-roads." Under this grant of power, congress can pass no laws except such as are requisite to secure the safe and expeditious transportation of the mail from one place to another, and the faithful delivery, by the persons employed for that purpose, of all letters, &c., sent by mail. The laws of the United States, therefore, declaring it to be unlawful to open letters for the purpose of obstructing the correspondence or prying into the concerns of others, apply only to letters which shall be opened after being put into a post-office, and before being delivered to the person to whom they are directed. For opening such letters, with the intent above mentioned, the punishment prescribed by the act of congress, is a fine not ex-

ceeding five hundred dollars, together with imprisonment not exceeding twelve months.]

*Destroying bridges and gates.*—Wilfully or maliciously destroying any public or toll bridge, or any turnpike gate, is a misdemeanor.

*Destroying mill dams, &c.*—Unlawfully and wilfully, or maliciously destroying any mill dam, or other dam erected to create hydraulic power, or any embankment necessary for the purpose of such dam, or wilfully and maliciously making or causing to be made, any opening in such dam or embankment, with the intent to destroy the same, is a misdemeanor.

*Removing, &c., monuments in boundaries of land.*—It is a misdemeanor—

Wilfully or maliciously to remove any monuments of stone, wood or other durable material, erected for the purpose of designating the corner, or any other point, in the boundary of any lot or tract of land: or,

Wilfully and maliciously to deface or alter the marks upon any tree, post or other monuments, made for the purpose of designating any point, course or line, in the boundary of any lot or tract of land: or,

Wilfully and maliciously to cut down or remove any tree upon which such marks shall be made

for such purpose, with the intent to destroy such marks.

*Injuring mile-stones, &c.*—Wilfully or maliciously, to break, destroy or remove any mile-stone, mile-board, or guide-board, erected upon any public highway or turnpike road, or wilfully or maliciously to deface or alter any inscription upon any such stone or board, is a misdemeanor, punishable by imprisonment in a county jail not exceeding three months, or by fine not exceeding fifty dollars, or by both such fine and imprisonment.

*Selling offices.*—Every person holding or exercising any office under the laws or constitution of this state, who shall, for any reward or gratuity, paid or agreed to be paid, grant to another the right or authority to discharge any of the duties of such office, shall, upon conviction, be deemed guilty of a misdemeanor, and, in addition to the other punishment provided in cases of misdemeanor, shall forfeit his office, and be forever disabled from holding any such office.

*Buying offices.*—Every person who shall give, or make any agreement to give, any gratuity or reward, in consideration of any such grant or deputation, shall, upon conviction, be deemed guilty of a misdemeanor.

*Neglects by public officers.*—Every wilful neglect by any public officer, or by any person holding



any public trust or employment, to perform any duty enjoined upon him by law, is a misdemeanor, and punishable as such, in the manner hereinafter stated, in all cases where there is no special provision for the punishment of such delinquency.

*Punishment for misdemeanors.*—As already stated at the beginning of this section, the punishment for each of the misdemeanors described in this section, except the few for which the punishment has already been mentioned, is imprisonment in a county jail not exceeding one year, or a fine not exceeding two hundred and fifty dollars, or both.

*Imprisoning in solitary cells.*—The court before which any person shall be convicted of any offence punishable by imprisonment in a county jail, may sentence such person to be imprisoned in a solitary cell in such jail, if any such be erected: but such imprisonment shall in no case exceed thirty days in the whole.

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## SECTION VII.

### GENERAL PROVISIONS CONCERNING CRIMES AND THEIR PUNISHMENTS.

*Insane persons.*—No act done by a person in a state of insanity can be punished as an offence; and no insane person can be tried, sentenced to any pu-

nishment, or punished for any crime or offence, while he continues in that state.

*Attempts to commit offences.*—Every person who shall attempt to commit an offence prohibited by law, and in such attempt, shall do any act towards the commission of such offence, but shall fail in the perpetration thereof, or shall be prevented or intercepted in executing the same; upon conviction thereof, shall, in cases where no provision is made by law for the punishment of such attempt, be punished as follows:

1. If the offence attempted to be committed, be such as is punishable by the death of the offender, the person convicted of such attempt, shall be punished by imprisonment in a state-prison not exceeding ten years:

2. If the offence so attempted be punishable by imprisonment in a state-prison for four years or more, or by imprisonment in a county jail, the person convicted of such attempt, shall be punished by imprisonment in a state-prison or in a county jail, as the case may be, for a term not exceeding one-half of the longest term of imprisonment prescribed, upon a conviction of the offence so attempted:

3. If the offence so attempted, be punishable by imprisonment in a state-prison for a term less than four years, the person convicted of such attempt,

shall be sentenced to imprisonment in a county jail for not more than one year :

4. If the offence so attempted, be punishable by a fine, the offender convicted of such attempt, shall be liable to a fine not exceeding one-half of the largest amount which may be imposed, upon a conviction for the offence so attempted :

5. If the offence so attempted, be punishable by imprisonment and by fine, the offender convicted of such attempt, may be punished by both imprisonment and fine, not exceeding one-half of the longest time of imprisonment and one-half of the greatest fine which may be imposed, upon a conviction for the offence so attempted.\*

*Stealing in another State.*—Every person who shall feloniously steal the property of another, in any other state or country, and shall bring the same into this state, may be convicted and punished, in the same manner as if such larceny had been committed in this state; and in every such case, such larceny may be charged to have been committed in any town or city, into or through which, such stolen property shall have been brought.

*Principals in the second degree, and accessaries before the fact.*—Principals in the second degree in the commission of any felony, and accessaries to any felony, *before the fact*, are punisha-

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\* This word is printed in the Revised Statutes, *committed*.

ble in the same manner as principals in the first degree.

*Accessaries after the fact.*—Accessaries to any felony, *after the fact*, are punishable by imprisonment in a state-prison not exceeding five years, or in a county jail not exceeding one year, or by a fine not exceeding five hundred dollars, or by both such find and imprisonment.

[A man may be a *principal* in an offence in *two* degrees. A principal in the *first* degree, is he that is the actor, or the absolute perpetrator of the crime; and, a principal in the *second* degree, is he who is present, aiding and abetting the criminal act to be done; which *presence* need not, however, always be an actual, immediate standing by, within sight or hearing of the fact, for there may be also, a constructive presence, as when one commits a robbery or murder, and another keeps watch or guard, at some convenient distance.

These two descriptions of offenders are, by our laws, as we have seen above, placed upon the same footing as it regards punishment.

An *accessary* is one who is not the chief actor in the offence, nor present at its perpetration, but in some way connected therein, either *before* or *after* the fact committed.

An *accessary before* the fact is one who has procured, counselled or commanded another to commit a crime, having himself been absent at the time of its commission: and he is, also, as we have seen, placed upon the same footing as the principal.

An *accessary after* the fact, is one who, after the commission of any felony, conceals the offender, or gives him

any other aid, knowing that he has committed a felony, with intent and in order that he may avoid, or escape from, arrest or trial.]

*Second offence after conviction for felony.*—If any person convicted of any offence punishable by imprisonment in a state-prison, shall be discharged either upon being pardoned or upon the expiration of his sentence, and shall subsequently be convicted of any offence committed after such pardon or discharge, he shall be punished as follows:

1. If the offence of which such person shall be subsequently convicted, be such, that upon a first conviction, an offender would be punishable in a state-prison for any term exceeding five years, then such person shall be punished by imprisonment in a state-prison, for a term not less than ten years:

2. If such subsequent offence be such, that upon a first conviction, the offender would be punishable by imprisonment in a state-prison for five years or any less term, then the person convicted of such subsequent offence, shall be punished by imprisonment in a state-prison for a term not exceeding ten years:

3. If such subsequent conviction be for petit larceny, or for any attempt to commit an offence, which, if committed, would be punishable by imprisonment in a state-prison, then the person convicted of such subsequent offence, shall be punish-

ed by imprisonment in a state-prison for a term not exceeding five years.

*Second offence after conviction for petit larceny, &c.*—Every person having been convicted of petit larceny, or of an attempt to commit an offence, which, if perpetrated, would be punishable by imprisonment in a state-prison, and having been pardoned or otherwise discharged, who shall be subsequently convicted of any offence committed after such pardon or discharge, shall be punished as follows:

1. If such subsequent offence be such, that upon a first conviction, the offender would be punishable by imprisonment in a state-prison for life, at the discretion of the court, then such person shall be sentenced to imprisonment in such prison for life:

2. If such subsequent offence be such, that upon a first conviction, the offender would be punishable by imprisonment in a state-prison for any term less than for life, then such person shall be sentenced to imprisonment in such prison, for the longest time prescribed upon a conviction upon a first offence:

3. If such subsequent conviction be for a petit larceny, or for any attempt to commit an offence, which, if perpetrated, would be punishable by imprisonment in a state-prison, then such person shall

be sentenced to imprisonment in such prison for a term not exceeding five years.

*Second offence after conviction in another state or country.*—Persons convicted of any offence in this state, who shall have been previously convicted of an offence in any other state, or in a foreign country, punishable by the laws of this state, when committed here, by imprisonment in a state-prison, are punishable in the same manner as if such previous conviction had taken place in this state.

*Fines may be imposed.*—Upon a conviction for any of the foregoing offences punishable by imprisonment, in relation to which no fine is specially prescribed, the court may impose a fine on the offender, not exceeding two hundred dollars.

*Recovery of debts and damages against persons imprisoned.*—When any debtor is imprisoned in a state-prison for any term less than his natural life, or is imprisoned for any criminal offence in any county jail or penitentiary, for any term more than one year, provision is made by our laws, to enforce payment of his debts; and a like provision is made for the recovery of satisfaction in favor of any one who is injured by the commission of any felony, for which the offender shall be sentenced to imprisonment in a state-prison.

*Juvenile offenders.*—Persons under the age of sixteen years, who shall be convicted of any felony,

instead of being sentenced to imprisonment in a state-prison, may be sent to the house of refuge established by the society for the reformation of juvenile delinquents in the city of New-York.

*Disqualification of felons to testify.*—Persons convicted of felony, are not permitted to testify as witnesses in any case, civil or criminal, unless they have been pardoned by the governor or by the legislature, except in cases specially provided for by law.



## CHAPTER II.

### OF CRIMES AND THEIR PUNISHMENT, AS DEFINED BY THE LAWS OF THE UNITED STATES.

#### PRELIMINARY REMARKS.

As is stated and explained in the preliminary Essay on the Principles of Civil Government, we live under two separate governments—a national and a state government—each possessing distinct and independent powers. Besides the offences treated of in the foregoing chapter, made punishable by the state laws, and triable only in the state courts, there are, therefore, others, for the punishment of which, it is the business of the national legislature to provide. These, as it will be seen, are either such offences as relate to *subjects* of legislation, which, by the constitution of the United States, are placed under the authority of congress, or, such offences as are committed in *places* not within the jurisdiction of any particular state.

Offenders against the laws of the United States, are prosecuted and tried in the national courts, in the name of the United States.

#### SECTION I.

##### OF CRIMES PUNISHABLE BY THE LAWS OF THE UNITED STATES WITH DEATH

The crimes for which, by the laws of the United States, the penalty of death is inflicted, are the following:

1. *Treason against the United States.*—This

crime consists in levying war against the United States, or in adhering to their enemies, giving them aid and comfort.

2. *Murder*, committed upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state, whether the person murdered, die immediately where the offence is committed, or afterwards upon land.

The counsellors, aiders and abettors of the offender are also punishable with death. And if the offence be committed on board of an *American* vessel, by any seaman, passenger or other person belonging to the company of such vessel, it is punishable here, although, at the time of its commission, the vessel was lying in a port belonging to a foreign nation.

3. *Murder*, committed within any fort, arsenal, dock-yard, magazine, or in any other place or district of country, under the sole and exclusive jurisdiction of the United States.

4. *Wilfully and maliciously setting on fire, burning or otherwise destroying vessels of war belonging to the United States*, afloat on the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay within the admiralty jurisdiction of the United States, and out of the ju-

risdiction of any particular state; or causing, or procuring it to be done, or aiding or abetting the offender.

5. *Destroying other vessels.*—Every person not being an owner, who shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy, any vessel to which he belongs, being the property of any citizen or citizens of the United States, or procure the same to be done, shall, on conviction, suffer death: and every person, who shall, on the high seas, wilfully and corruptly cast away, burn, or otherwise destroy, any vessel of which he is wholly or in part the owner, with intent to defraud any insurer of such vessel or her cargo, shall, on conviction, suffer death.

*Piracy and piratical offences.*—If any person upon the high seas, or in any open roadstead, or in any haven, basin or bay, or in any river where the sea ebbs and flows, shall commit the crime of robbery in and upon any vessel, or ship's company, or the lading thereof; or, if any person engaged in any piratical cruise or enterprise, or belonging to the crew or ship's company of any piratical vessel, shall land, and, on shore, commit any robbery, such person shall be adjudged a pirate, and upon conviction, shall suffer death.

[Piracy, properly means, simply, robbery at sea. Robbery is a felonious and forcible taking from another, money or

other valuable thing, by violence, or by putting him in fear.

It will be seen, in what follows, that by our laws, several other offences, not strictly amounting to piracy as above defined, are *declared* to be piracies, and are punishable as such.]

If any captain or mariner of any vessel, shall, piratically and feloniously run away with such vessel, or any goods or merchandize on board, to the value of fifty dollars, or yield up such vessel voluntarily to a pirate; or if any seaman shall lay violent hands upon his commander, thereby to hinder and prevent him from fighting in defence of his vessel or cargo; every such offender shall be deemed and adjudged to be a pirate and felon, and shall, upon conviction, suffer death. And every person, who shall, either upon the land or on the seas, knowingly and willingly aid, procure, command, counsel or advise any other person to commit any murder or robbery, or other piracy upon the seas, and such other person shall commit such crime, shall, upon conviction, suffer death.

[Though the terms of the last foregoing provisions are general with respect to persons, they are understood to extend only to persons employed on board American vessels, or resident in this country.]

If any citizen of the United States shall commit any piracy, or robbery, or any act of hostility against the United States, or any citizen thereof, upon the high sea, under colour of any commission, or pre-

tence of authority, from any foreign prince or state, such offender shall, notwithstanding the pretence of any such authority, be deemed and adjudged a pirate, and, on conviction, shall suffer death.

By the laws of the United States, it is also piracy, punishable with death, for any *American citizen* to be engaged in the *slave trade*, on board of *any* vessel; and also for *any* person, of whatever nation, to be so engaged, on board of a vessel *owned*, wholly or in part, *by, or navigated for, or on account of, any American citizen*.

*Arson in forts, &c.*—Wilfully and maliciously burning any dwelling-house, or any store, barn, stable, or other building, being part of any dwelling-house, within any fort, dock-yard, navy-yard, arsenal, armory or magazine, the site whereof is ceded to, and under the jurisdiction of, the United States, or counselling, aiding or abetting such burning, is felony punishable with death.

*Robbery of mail carrier.*—If any person shall be convicted a *second time*, of robbing a carrier of the mail of the United States, or any other person entrusted therewith, of such mail, or of part thereof; or, if, in affecting such robbery the *first time*, the offender shall wound the person having custody thereof, or put his life in jeopardy, by the use of dangerous weapons, such offender shall suffer death.

*Rescuing convicts.*—If any person shall, by force, set at liberty, or rescue any person found guilty of treason, murder or other capital crime, or rescue any person convicted of any of the said crimes, going to execution, or during execution, every person so offending and being thereof convicted, shall suffer death.

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## SECTION II.

OF CRIMES PUNISHABLE BY THE LAWS OF THE UNITED STATES WITH FINE OR IMPRISONMENT, OR BOTH.

*Misprison of treason.*—This offence consists in the concealment of treasonable acts committed by another. And the laws of the United States provide, that if any person or persons, having knowledge of the commission of treason, shall conceal, and not, as soon as may be, disclose and make known the same to the president of the United States, or some one of the judges thereof, or to the governor of a particular state, or to some one of the judges thereof, such person or persons, on conviction, shall be adjudged guilty of misprison of treason, and shall be imprisoned not exceeding seven years, and fined not exceeding one thousand dollars.

*Entering the military service of foreign nations,*

§c.—With a view to the preservation of peace and amity with other nations, the laws of the United States forbid, under severe penalties, of fine and imprisonment, all interference by our citizens in the wars of foreign nations. These provisions are too numerous and extended to be minutely stated in this work. They make it unlawful for any citizen of the United States, to receive or exercise any commission, or to enlist in the land or naval military service of any foreign power; or to fit out, or be concerned in fitting out, or to purchase an interest in any armed vessel, to cruise in the service of any foreign power against another, with which we are at peace; or to be in any way concerned in increasing the force of any vessel coming into our ports, and being in the service of one foreign power against another, with which we are at peace. They also forbid all persons within the territories or jurisdiction of the United States, to set on foot or provide the means for any military expedition against the territory or dominion of any foreign power. The president is also expressly authorized to employ force to detain vessels so fitted out, or attempted to be fitted out, or whose force has been so increased; and also for the purpose of preventing the carrying on of such military expeditions.

*Unlawful attacks upon vessels.*—Maliciously attacking or setting upon any vessel, upon the high seas, or in any waters within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular state, with an intent unlawfully to plunder such vessel, or aiding or abetting therein, is felony, punishable by a fine, not exceeding five thousand dollars, and by imprisonment at hard labor, not exceeding ten years.

*Breaking or entering vessels, &c., with a criminal intent, &c.*—Breaking or entering any vessel upon the high seas, or in any of the waters last mentioned, with intent to kill, or to commit any other felony; or, wilfully and maliciously cutting, spoiling or destroying, any cordage, cable, buoys, buoy-rope, head-fast, or other fast, fixed to any anchor or moorings, belonging to any ship, vessel, boat or raft, is felony, punishable by fine not exceeding one thousand dollars, and imprisonment at hard labor not exceeding five years.

*Manslaughter at sea, confederacy with pirates, &c.*—If any seaman or other person shall commit manslaughter upon the high seas; or confederate, or attempt, or endeavor to corrupt any commander, master, officer or mariner, to yield up, or to run away with any vessel, or with any goods, or to turn pirate, or to go over to, or confederate with pirates,



or in any wise trade with any pirate, knowing him to be such, or shall furnish such pirate with any ammunition, stores or provisions, or shall fit out any vessel knowingly and with a design to trade with or supply or correspond with any pirate or robber upon the seas; or if any person shall counsel, combine, confederate or correspond with any pirate or robber upon the seas, knowing him to be guilty of such piracy or robbery; such person so offending, and being thereof convicted, shall be imprisoned not exceeding three years, and fined not exceeding one thousand dollars.

*Revolt or mutiny on ship-board.*—If any one or more of the crew of any American ship or vessel on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, shall unlawfully, wilfully and with force, or by fraud, threats, or other intimidations, usurp the command of such ship or vessel, from the master or other commanding officer thereof, or deprive him of his authority and command on board thereof, or resist or prevent him in the free and lawful exercise thereof, or transfer such authority and command to any other person not lawfully entitled thereto, every such person so offending, his aiders and abettors, shall be deemed guilty of a revolt, or mutiny and felony; and shall, on conviction thereof, be punished by fine not exceeding

two thousand dollars, and imprisonment at hard labor, not exceeding ten years.

*Attempt to make revolt or mutiny, &c.*—Endeavoring to make a revolt or mutiny, under the circumstances and in the manner above mentioned; or conspiring with other persons on board, to make such revolt or mutiny; or inciting others of the crew to disobedience, resistance or neglect of duty; or assembling with others, in a tumultuous and mutinous manner, or making a riot on board; or unlawfully confining the master or other commanding officer; is punishable by fine not exceeding one thousand dollars, or by imprisonment not exceeding five years, or by both.

*Maltreatment of seamen by masters of vessels.*—If any master or other officer of any American ship or vessel, on the high seas, or on any other waters within the admiralty and maritime jurisdiction of the United States, shall, from malice, hatred or revenge, and without justifiable cause, beat, wound or imprison, any one or more of the crew of such ship or vessel, or withhold from them suitable food and nourishment, or inflict upon them any cruel and unusual punishment, every such person so offending, shall, on conviction thereof, be punished by fine, not exceeding one thousand dollars, or by imprisonment, not exceeding five years, or by both.

*Plunder, &c., of vessels in distress; endeavoring*

*to cause shipwreck, &c.*—If any person or persons shall plunder, steal or destroy, any money or goods, from or belonging to any ship or vessel, or boat, or raft, which shall be in distress or wrecked, at sea, or in any other place within the admiralty and maritime jurisdiction of the United States; or wilfully obstruct the escape of any person from such ship, vessel, &c.; or shew any false light or lights, or extinguish any true light, with intention to bring such ship, vessel, &c., into danger, distress, or shipwreck; every such offender, his aiders, counsellors and abettors, shall be demed guilty of felony, and shall, on conviction thereof, be punished by fine, not exceeding five thousand dollars, and imprisonment at hard labor, not exceeding ten years.

*Leaving seamen in foreign parts.*—If any master or commander of any vessel belonging wholly or in part to a citizen of the United States, shall, while abroad, maliciously and without justifiable cause, force on shore, or leave behind, in any foreign port or place, or refuse to bring home, any officer or mariner of such vessel, whom he carried out with him, he shall, upon conviction thereof, be punished by fine, not exceeding five hundred dollars, or by imprisonment, not exceeding six months.

*Conspiracy to destroy vessels, &c.*—If any person shall, on the high seas, or within the United States, corruptly conspire and confederate with any other

person or persons, to cast away, burn or otherwise destroy, any vessel, or to procure the same to be done, with intent to injure any insurer of such vessel, or of any goods on board of her, or with intent to injure any person that hath lent or advanced any money and taken security therefor on such vessel, or shall, within the United States, build or fit out or aid in building or fitting out any vessel, with the intent that the same shall be cast away, burnt or destroyed, for the purpose or with the design aforesaid; such offender shall be deemed guilty of felony, and shall, on conviction, be punished by fine, not exceeding ten thousand dollars, and by imprisonment at hard labor, not exceeding ten years.

*Assault on ship-board with dangerous weapons, with intent to commit a felony.*—If any person on the high seas, or in any other waters within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular state, on board any vessel belonging wholly or in part to the United States or any citizen thereof, shall, with a dangerous weapon, or with intent to kill, or to commit any other felony, assault another; such offender shall, on conviction, be punished by fine, not exceeding three thousand dollars, and by imprisonment at hard labor, not exceeding three years.

*Punishment of offences committed in foreign ports.*—Offences committed on board American ves-

sels, in ports or places within the jurisdiction of foreign powers, by any person belonging to the ship's company, or any passenger, on another of the ship's company or passenger, are cognizable and punishable in the courts of the United States, in the same manner as if committed on board such vessels on the high seas.

*Arson of public buildings, &c.*—Wilfully and maliciously setting fire to, or burning, any arsenal, armory, magazine, rope-walk, ship-house, warehouse, block-house or barracks, or any store-house, barn or stable, not being a part of a dwelling-house; or any other building, the burning whereof is not, (as herein before specified,) punishable with death; or any ship or vessel, built or building, or begun to be built, or repairing, or any light-house or beacon, or any timber, cables, rigging or other materials for building, repairing, or fitting out ships or vessels, or any pile of wood, boards or other lumber, or any military, naval, or victualling stores, arms, or other munitions of war; being the property of the United States, and in places ceded to the United States; is felony, punishable by fine, not exceeding five thousand dollars, and imprisonment at hard labor, not exceeding ten years.

*Manslaughter.*—The crime of manslaughter, committed within any fort, arsenal, dock-yard, magazine, or other place or district of country under

the sole and exclusive jurisdiction of the United States, is punishable by imprisonment, not exceeding three years, and fine, not exceeding one thousand dollars.

*Offences not otherwise provided for.*—Offences committed in the places, above mentioned, the punishment whereof is not specially provided for by the laws of the United States, are to be punished in the manner prescribed for the like offences, by the laws of the state in which such fort or other such place is situated.

*Being accessory to piracy after the fact.*—Knowingly entertaining or concealing any pirate, or knowingly receiving into custody any vessel, goods or chattels, which have been, by any such pirate, feloniously taken, is an offence, punishable by imprisonment not exceeding three years, and fine not exceeding five hundred dollars.\*

*Misprison of felony.*—If any person having a knowledge of the actual commission of murder or other felony, upon the high seas, or within any fort,

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\* In addition to the punishments denounced by the laws of the United States, against the crime of piracy, the president is authorized to instruct the commanders of our ships of war to subdue, seize and send into port, any armed vessel or boat, or any vessel or boat, the crew whereof shall be armed, and which shall have committed or attempted any piratical aggression upon any American vessel; and vessels so captured are liable to be proceeded against, condemned and sold in the courts of the United States.

arsenal, dock-yard, magazine, or other place or district of country, under the sole and exclusive jurisdiction of the United States, shall conceal, and not as soon as may be, disclose and make known the same to some one of the judges or other persons in civil or military authority under the United States, such person shall, on conviction thereof, be imprisoned not exceeding three years, and fined not exceeding five hundred dollars.

*Mayhem.*—This offence, committed within any place upon the land, under the sole and exclusive jurisdiction of the United States; or upon the high seas, in any vessel belonging to the United States, or to any citizen thereof, is punishable by imprisonment not exceeding seven years, and fine not exceeding one thousand dollars: and the counsellors, aiders and abettors of the principal offender, are punishable in like manner.

*Forgery.*—To forge or counterfeit, or to assist or be instrumental in forging or counterfeiting any certificate of the public stock or debt, treasury note, or other public security of the United States, or any letters patent; or any bill, check or draft for money drawn by or on the treasurer of the United States, or other authorized public officer or agent of the United States; or to pass, or attempt to pass, as true, any such forged or counterfeited writing

or instrument, knowing the same to be forged or counterfeited, with intent to defraud: or,

To forge or counterfeit, or assist or be instrumental in forging or counterfeiting, any power of attorney, to assign, transfer, sell or convey, any share or sum in the public stock or debt of the United States, or in the capital stock of the bank of the United States, or to receive any annuity or dividend, on any such stock or debt; or, to forge or counterfeit, or assist or be instrumental in forging or counterfeiting, any such power of attorney, to receive any pension, prize-money, wages or other sum due, or to become due, from the United States; or knowingly and fraudulently to make use of such forged or counterfeited power of attorney; is felony, punishable by fine, not exceeding ten thousand dollars, and imprisonment at hard labor, not exceeding ten years.

Forging any custom-house paper, or knowingly and fraudulently attempting to make use of such forged paper, is felony, punishable by fine not exceeding one thousand dollars, and imprisonment at hard labor, not exceeding three years.

*Forging gold or silver coin.*—Forgery of the gold or silver coin of the United States, or of any foreign gold or silver coin, made current in the United States by law, or causing or procuring such forgery to be committed, or assisting therein; or



knowingly and fraudulently passing or attempting to pass, or bringing into the United States, from any foreign place, with intent to pass, any such forged coin, is felony, punishable by fine not exceeding five thousand dollars, and imprisonment at hard labor not exceeding ten years.

The like offences committed in relation to the copper coin of the United States, also constitute felony, and are punishable by fine not exceeding one thousand dollars, and imprisonment at hard labor not exceeding three years.

*Fraudulently and for the sake of gain, lightening, or by any means diminishing the value of the gold or silver coins of the United States.*—This offence is punishable by imprisonment not exceeding two years, and fine not exceeding two thousand dollars.

*Personating another.*—Falsely and deceitfully personating any real owner or holder of any share or sum in any public stock or debt, or capital stock of the bank of the United States; or any person entitled to any annuity, dividend, pension, prize-money, wages or other debt or sum of money due, or to become due, from the United States, and thereby exercising or endeavouring to exercise any of the rights of such real owner relative to such share, annuity, dividend, pension, prize-money, wages or other debt or sum so due, is felony, punishable by

fine not exceeding five thousand dollars, and by imprisonment at hard labor not exceeding ten years.

*Larceny and embezzlement of public property.*—If any person having the charge of any munitions of war shall, for the sake of gain, or for the purpose of hindering or impeding the service of the United States, embezzle, purloin or convey away any such munitions of war, or knowingly counsel, aid or abet any other in so doing, such offender shall, on conviction, be fined to an amount not exceeding four times the value of such munitions of war so embezzled, purloined or conveyed away, and be publicly whipped, not exceeding thirty-nine stripes.

*Larceny at sea, and in forts, &c.*—Stealing property of any kind upon the seas, or in any place under the sole and exclusive jurisdiction of the United States, is punishable by fine, not exceeding four times the value of the goods stolen, and whipping, not exceeding thirty-nine stripes.

*Receiving stolen goods at sea, and in forts, &c.*—Buying, receiving or concealing, or aiding in concealing, any stolen goods, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay, within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state, knowing such goods to have been stolen, is a misdemeanor

punishable by fine not exceeding one thousand dollars, and imprisonment at hard labor not exceeding three years.

*Perjury and subornation of perjury.*—Knowingly and willingly swearing or affirming falsely, in any case, matter, bearing or other proceeding, when an oath or affirmation shall be required to be taken or administered, under or by any law or laws of the United States, constitutes the crime of perjury; and knowingly and willingly procuring any such perjury to be committed, constitutes the crime of subornation of perjury; and these offences are punishable by fine not exceeding two thousand dollars, and imprisonment not exceeding five years.

*Extortion.*—If any officer of the United States shall be guilty of extortion, under or by color of his office, he shall, on conviction thereof, be punished by fine, not exceeding five hundred dollars, or by imprisonment, not exceeding one year.

*Resistance to the laws of the United States.*—If any person shall obstruct, resist or oppose any officer of the United States, in serving or attempting to serve or execute any mesne process or warrant, or any rule or order of any of the courts of the United States, or any other legal or judicial process whatsoever; or shall assault, beat or wound any officer, or other person duly authorized, in serving or executing any writ, rule, order, process or warrant

aforesaid; or shall dispossess or rescue, or attempt to dispossess or rescue, any property taken or detained by any officer or other person, under the authority of the United States, such person shall, on conviction, be imprisoned not exceeding twelve months, and fined not exceeding three hundred dollars.

If any person shall, by force, set at liberty, or rescue any person who, before conviction, shall stand committed for any capital offence; or shall, by force, set at liberty, or rescue any person committed for, or convicted of, any other offence against the United States, every person so offending, shall, on conviction thereof, be fined not exceeding five hundred dollars, and imprisoned not exceeding one year.

*Violating the rights of ambassadors, &c.*—It is declared unlawful, by the laws of the United States, to sue forth or prosecute any writ or process against the person of any ambassador, or other public minister of any foreign prince or state, authorized and received as such, by the president of the United States, or any domestic or servant of such ambassador or other public minister; and all persons suing forth or prosecuting such process, and their attornies or solicitors, and all officers executing such process, are declared violators of the laws of nations, and disturbers of the public repose, and

subject to imprisonment not exceeding three years, and to be fined at the discretion of the court;\* and it is further provided that if any person shall violate any safe conduct or passport duly obtained and issued under the authority of the United States, or shall assault, strike, wound, imprison or in any other manner infract the law of nations, by offering violence to the person of an ambassador or other minister, such person shall, on conviction, be imprisoned not exceeding three years, and fined at the discretion of the court.

*Offences against the laws establishing and regulating the Post-Office Department.*—If any person employed in any of the departments of the post-office establishment, shall unlawfully detain, delay, or open, any letter, packet, bag, or mail of letters, with which he shall be entrusted, or which shall have come to his possession, and which are intended to be conveyed by post; or, if any such person shall secrete, embezzle, or destroy, any letter or packet entrusted to such person as aforesaid, and *which shall not contain* any bank note or other security for, or assurance relating to money, or any other paper conferring, securing or affecting any

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\* But citizens and inhabitants of the United States, who shall have contracted debts prior to entering the service of any ambassador or other public minister, which debts shall be still due and unpaid, are excepted from the above provisions.

legal right, or any other article of value, or any writing respecting the same; every such offender shall upon conviction, be fined not exceeding three hundred dollars, or imprisoned not exceeding three months, or both.

If any person so employed, shall secrete, embezzle, or destroy, any letter, packet, bag, or mail of letters, with which he shall be entrusted, or which shall have come to his possession, and are intended to be conveyed by post, *containing* any such bank note or other security for, or assurance relating to money, or other paper conferring, securing or affecting any legal right, or any other article of value, or any writing representing the same; or, if any such person shall steal or take any such bank note, or other paper or thing of value, out of any such letter, packet, bag, or mail of letters, such offender shall, on conviction, be imprisoned at hard labor, not less than ten years, nor exceeding twenty-one years.

If any person shall rob any carrier of the mail, or other person entrusted therewith, of such mail, or of part thereof; such offender shall, on conviction, be imprisoned not less than five nor more than ten years;\* and if any person shall be accessory af-

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\* Upon conviction for a *second* offence, and also where the carrier is wounded, or his life put in jeopardy, by the use of dangerous weapons, in committing the *first* offence, the punishment, as we have already seen, is death.

ter the fact, to any such robbery, he shall be subject to a fine not exceeding two thousand dollars, and imprisonment not exceeding ten years.

Any attempt, *without success*, to commit such robbery, by assaulting the person having the custody of the mail, shooting at him, his horse or mule, or threatening him with dangerous weapons, is punishable by imprisonment at hard labor, not less than two years, nor exceeding ten years.

If any person shall steal the mail, or shall steal or take any letter or packet, from or out of any mail, or from or out of any post-office; or,

If any person shall take the mail, or shall take any letter or packet from the mail, or from any post-office, whether with or without the consent of the person having the custody thereof, which mail, letter or packet shall contain any bank note or other paper or article of value, above mentioned; and such person shall open, embezzle or destroy, such mail, letter or packet; or,

If any person shall, by fraud or deception, obtain from any person having the custody thereof, any mail, letter or packet, containing any such bank note, or other paper or article of value, the offender shall, on conviction, be imprisoned not less than two nor more than ten years.

If any person shall buy, receive or conceal, or

aid in buying, receiving or concealing, any such bank note, or other paper or article of value, knowing the same to have been stolen or embezzled from the mail, or out of any post-office, or from any person having the custody of the mail, or of the letters sent or to be sent therein, such offender shall, on conviction, pay a fine not exceeding two thousand dollars, and be imprisoned at hard labor not exceeding ten years.

If *any* person shall take any letter or packet, *not containing* any article of value, out of the post-office; or shall open any letter or packet, which shall have been in a post-office, or in the custody of a mail carrier, before it shall have been delivered to the person to whom it is directed; with a design to obstruct the correspondence of others, or pry into their business or secrets; or shall secrete, embezzle or destroy, any such mail, letter or packet, such offender shall, upon conviction, be punished by a fine not exceeding five hundred dollars, and by imprisonment at hard labor not exceeding twelve months.

If any person shall rip, cut, tear, burn, or otherwise injure, any valise, port-manteau, or other bag, used, or designed to be used, by any person acting under the authority of the post-master general, in the conveyance of any mail, letter, packet, or newspaper, or pamphlet; or shall draw or break any staple, or



loosen any part of any lock, chain or strap, attached, or belonging to, any such valise, port-manteau or bag; with an intent to rob or steal any mail, letter, packet, newspaper or pamphlet, such offender shall, upon conviction, be punished by a fine of not less than one hundred dollars, nor more than five hundred dollars; or by imprisonment at hard labor, not exceeding three years.

If any person, having taken charge of the mail, shall quit or desert it, before delivering it into the post-office kept at the termination of the route, or to some known mail carrier, or agent of the general post-office authorized to receive the same, such offender shall, on conviction, forfeit and pay a sum not exceeding five hundred dollars, for every such offence.

If any person employed in any department of the post-office, shall improperly detain, delay, embezzle or destroy, any newspaper, or shall permit any other person to do so; or shall open, or permit any other to open, any mail or packet of newspapers, not directed to the office where he is employed, such offender shall, on conviction, forfeit a sum not exceeding fifty dollars, for every such offence.

And if any other person shall open any mail or packet of newspapers, or shall embezzle or destroy such papers, the same not being directed to him,

and he not being authorized to receive or open the same, such offender shall, on conviction, pay a sum not exceeding twenty dollars for every such offence.

And if any person shall take or steal, any packet, bag, or mail of newspapers, from or out of any post-office, or from any person having custody thereof, such person shall, on conviction, be imprisoned at hard labor not exceeding three months, for every such offence.

If any person shall enclose or conceal a letter or other thing, or any memorandum in writing, in a newspaper, pamphlet or magazine, or in any package thereof, or make any writing or memorandum thereon, and deliver the same into any post-office, or to any person for that purpose, in order that the same may be carried by post, free of letter postage, he shall forfeit the sum of five dollars, for every such offence.

Every person who shall advise, procure, or assist in, the commission of any of the crimes above mentioned, against the laws establishing and regulating the post-office department, shall be subject to the same punishment as the person who shall actually commit such crime.

Every post-master who shall fraudulently demand or receive any amount of postage beyond the rate

fixed by law, shall, on conviction, forfeit, for every such offence, one hundred dollars.

To counterfeit the hand-writing or frank of any person, or cause the same to be done, in order to avoid the payment of postage, is an offence punishable by a fine of five hundred dollars.



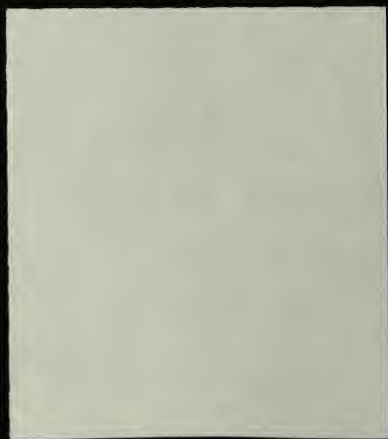
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# PART III.

## SELECT PARTS OF THE CIVIL LAWS OF THE STATE OF NEW-YORK.

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### CHAPTER I.

#### OF THE DISTRIBUTION OF PROPERTY LEFT BY DECEASED PERSONS WHO DIE INTESTATE.

##### PRELIMINARY REMARKS.

It is indispensable to the welfare and peace of society, that every description of property should, at all times, have an *owner*, fully entitled to possess and enjoy it, to the exclusion of all the rest of mankind.

It is well known that, according to our laws, any person, (of sufficient age and understanding,) who has a good title to property, may, during his life-time, by the observance of certain prescribed forms, convey or transfer his title to any other person; and that even upon his death bed, he may, by his *will*, designate the individual who shall succeed to his rights, after his death.

But it very frequently happens that persons die possessed of property, without leaving any will; or leaving one which is invalid, by reason of its not having been properly executed, or for some other reason; or by which only part of their property is devised or bequeathed. In such cases, if not provided for by law, the property thus left would no more belong to any one person than to any other.

In order, therefore, to prevent the confusion and contention which would otherwise arise, the law steps in and declares who shall succeed to the possessions of the deceased intestate.

The statute regulating the distribution of personal property, is usually called the *statute of distribution*; that regulating the descent of real property, the *statute of descents*.

## SECTION I.

### OF THE DISTRIBUTION OF PERSONAL ESTATES.

The personal estates of deceased persons, not disposed of by will, are distributed, after payment of debts and legacies,\* if any, as follows:

1. If the deceased person leave a widow, and also a child or children, the widow is entitled to one-third, and the remainder goes to such child, or in equal shares, to such children. And if any of the children be dead, leaving a child or children, the share to which the parent, if living, would be entitled, goes to such grand-child, or, in equal shares, to such grand-children of the intestate; and so of descendants, if any, still more remote, whose intermediate progenitors are dead.

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\*A person may make a will, and give legacies not amounting to the whole of his personal property, and yet leave the residue of it undisposed of; in which case, such residue is to be distributed according to the statute of distributions, in the same manner as if no will had been made.

This, however, rarely happens, as the testator generally disposes of all his property.



2. If there be no children, nor any legal representatives of them, the widow is, in all cases, entitled to at least one-half, and in some cases more, as will be seen by the next rule.

3. If the deceased leave no child or other descendant, nor any father or mother, brother or sister, nephew or neice, then the widow is entitled to the whole: and if there be a brother or sister, nephew or neice, but no descendant or parent, still the widow will be entitled to the whole, if it do not exceed four thousand dollars; and if it exceed that amount, then she is entitled to one-half, together with the addition of two thousand dollars; the remainder to be distributed to the brothers and sisters, nephews and neices.

4. If the deceased leave a child or children, but no widow, the whole goes to such child, or, in equal portions, to such children. And if any of the children be dead, their legal representatives, if any, are entitled, as mentioned in the first rule.

5. If the deceased leave no children and no representatives of them, and no father, but leave a widow and a mother, one-half is to be distributed in equal portions to his mother, and his brothers and sisters and their descendants, if any; and if there be no widow, then the whole is to be so distributed.

6. If the deceased leave a father, but no child or other descendant, the father takes the half, if

there be a widow, and the whole, if there be no widow.

7. If the deceased leave a mother, but no child, or other descendant, nor any father, brother, sister, or representative of a brother or sister; the mother takes the half, if there be a widow, and the whole, if there be no widow.

8. When the deceased leaves neither a widow nor any children, nor representatives of a child, the distribution is to be made equally among the other relatives, in equal degree, to the deceased, and their representatives: but, among collateral relations, no representation is to be admitted, after brothers' and sisters' children.

9. Children born after the death of their fathers, take in the same manner as if they had been born before.

10. If any child has received any part of the estate, real or personal, in the life time of the deceased, as a portion or settlement in life, the amount so received is to be taken into the account in the distribution of the personal estate of the deceased; and if equal or more than equal in amount to the share of the whole, which, upon an equal division, would fall to such child, then such child shall receive nothing; and if such advancement be less in amount than such share, the deficiency shall be made up. But maintaining or educating, or giv-

ing money to a child, without a view to a portion or settlement in life, is not to be deemed an advancement; nor is this rule to be applied when the intestate has left real estate to descend to his heirs, but in such case, a similar though different rule is to be applied, (as will be seen in the next section,) for the purpose of producing still greater equality.

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## SECTION II.

### OF THE DESCENT OF REAL ESTATES.

The real estate of persons who die without devising the same, descends as follows:

1. If the intestate leaves several descendants, in the direct line of lineal descent, all of whom are of equal degree of consanguinity to such intestate, that is to say, all of whom are either children, or grand-children, or great-grand-children, and so on, his estate descends to them in equal shares.

2. If any of the children of the intestate be living, and any be dead, the estate descends to the children who are living, and to the descendants of such children as shall have died; that is to say—each child that is living, inherits the same share that would have fallen to him or her, if all had been living who have died leaving descendants—and the descendants of each child who is dead, inherits the share which their parent would have in-

herited, if living: and in like manner, if the intestate leaves no children, but leaves other descendants of unequal degrees of consanguinity, as grandchildren and great-grand-children, and so on, then those who are in the nearest degree of consanguinity, take the shares which would have descended to them, if all the descendants in the same degree of consanguinity, who have died leaving descendants, had been living, and the descendants of those who have died, respectively take the shares which their parents, if living, would have received.

3. In case the intestate dies leaving no descendants, but leaving a father, then the inheritance goes to the father, unless it came to the intestate on the part of his or her mother.\*

4. If the intestate leaves a mother, but no father nor descendants; or, if the estate came to him on the part of the mother, whether the father be living or not; then, if the intestate also leaves a brother or sister, or any descendant of a brother or sister, the inheritance goes to the mother during her life, and, at her death, to such of the brothers and sisters of the intestate as may be living, and to the descendants of such as may be dead, in the proportions prescribed in

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\* An estate is considered as having come to the intestate "*on the part*" of the mother, or father, whenever it came to the intestate by demise, gift or descent from the parent in question, or from any relative of the blood of such parent.

the next rule: and if the intestate leaves no brother or sister, nor any descendants of a brother or sister, the inheritance descends *in fee*, that is, wholly and absolutely, to the mother.

5. If the intestate leaves neither descendants nor father or mother, the inheritance descends in equal shares, to his brothers and sisters; and if any of them are dead, leaving descendants, then, to such brothers and sisters as are living, and to the descendants of such as are dead; that is to say—each brother or sister who is living, inherits the same share that would have fallen to him or her, if all the brothers and sisters who have died leaving descendants, had been living—and the descendants of each deceased brother or sister inherits the share which their parent, if living, would have received; and the same rule prevails as to the lineal descendants of brothers and sisters to the remotest degree.

6. When the intestate leaves neither descendants nor parents, nor brothers and sisters, nor the descendants of brothers and sisters, his estate, if of his own acquiring, that is, unless it came to him either on the part of his father or of his mother, descends to the brothers and sisters, equally, of *both* the parents of the intestate, and to their descendants, in the same manner as is prescribed in the last preceding rule, with respect to the brothers and sisters of the intestate himself.

7. If the inheritance came to the intestate on the part of his father, then the brothers and sisters of the father, and their descendants, take the whole; and if there are no such brothers and sisters, or descendants, the estate descends to the brothers and sisters of the mother, and their descendants. But if the inheritance came to the intestate on the part of the mother, then her brothers and sisters and their descendants, are, in like manner, to be preferred; and in default of them, the brothers and sisters of the father, and their descendants, take.

8. Relatives of the half blood inherit equally with those of the whole blood in the same degree; and the descendants of such relatives inherit in the same manner as the descendants of the whole blood, unless the inheritance came to the intestate by descent, devise or gift, of some one of his ancestors; in which case, all those who are not of the blood of such ancestor, are excluded from such inheritance.

9. In all cases not provided for by the preceding rules, the inheritance descends according to the course of the common law.

[Cases falling under this last rule are not likely often to occur, and it is deemed unnecessary in a work of this nature, to trace out its practical operation.]

10. As, in the preceding rules, the plural form is

often used in designating the legal heirs of the intestate, it is proper to add, in order to preclude the possibility of misapprehension, that where there is but one person standing in the required degree of relationship, to the intestate, as one child, one grandchild, one brother or sister, one nephew or niece, one uncle or aunt, &c., in such case the estate goes to such person alone.

11. If any one of the children of the intestate, shall have received from him, in his lifetime, any portion of his estate, real or personal, or both, the value thereof shall, for the purpose of a more equal division, be reckoned along with the real and personal estate left by the intestate; and if such portion be equal or superior to the amount of the share which such child would be entitled to receive, of the real and personal estate of the deceased, as thus reckoned, then such child and his descendants shall be excluded from any share in the real and personal estate of the intestate; and if such advancement is not equal to such share, the deficiency shall be made up from the real and personal estate, in such manner as to make all the shares in each, as nearly equal as may be. But maintaining or educating or giving money to a child, without a view to a portion or settlement in life, shall not be deemed an advancement.

The term "real estate," as used in the forego-

ing rules, is to be so construed as to include every estate, interest and right, legal and equitable, in real property, except where such interest or right ceases at the death of the intestate, or with the life of another person, and excepting leases for years.



## CHAPTER II.

### OF CONVEYANCES OF REAL ESTATE, AND OF THE PROOF AND RECORDING THEREOF.

A CONVEYANCE, as the term is used in this chapter, is any instrument in writing, by which the title to real property can be affected, except wills, leases for a term of not more than three years, and contracts for the sale or purchase of lands, to be afterwards carried into effect.

Conveyances must be *signed*, and, in general, they are required also to be *sealed*. It is not absolutely necessary that they should be witnessed; but it is nevertheless advisable to have at least one subscribing witness, especially if the conveyance is not acknowledged before an officer, as hereinafter explained, at the time of its execution. No person can, with propriety, subscribe his name as a witness, unless he either sees the conveyance executed, or being acquainted with the person executing it, hears him declare, that he has executed it. Conveyances take effect only from the time of their delivery.

Deeds for the conveyance of lands in the actual possession of another person, claiming under a ti-

tle adverse to that of the grantor, are absolutely void: but this is not the case with mortgages.

All conveyances of real estate ought to be *recorded*, in the office of the clerk of a county in which the lands lie: for although, without being recorded, they are valid, as between the parties to them and their heirs, they are void as against any subsequent purchaser, who buys the same land in good faith, and for a valuable consideration, whose conveyance shall be first recorded. Before a conveyance can be recorded, it must be either *acknowledged* by the person or persons executing it, or be *proved* by a subscribing witness thereto. When the acknowledgment or proof is taken within this state, it must be by some one of the following officers, viz: The chancellor, a justice of the supreme court, a circuit judge, a supreme court commissioner, a judge of county courts, a mayor or recorder of a city, or a commissioner of deeds.

And in general, when a conveyance is acknowledged or proved before a judge of the county courts, who is not a counsellor at law in the supreme court, or before a commissioner of deeds resident in a different county from that in which the lands lie, it is necessary to obtain the certificate of the clerk of the county in which such officer resides, verifying the official character and signature of such officer. This last provision is, however, declared not to be

applicable to conveyances executed by any agent of the Holland Land Company, or by any agent of the Pulteney estate. But, as conveyances for lands in this state, are sometimes executed in other states of the Union, and in foreign countries, it would be very inconvenient if they could be acknowledged and proved only by officers within the state. The Revised Statutes accordingly provide for such cases, and designate certain persons resident in other states and in foreign countries, before whom such conveyances may be acknowledged or proved. It is, however, deemed unnecessary to enumerate them here.

The conveyance of a married woman residing in this state, is ineffectual, unless, in addition to the usual acknowledgment, that it was executed by her, she also acknowledges, on a private examination, apart from her husband, that she executed such conveyance freely and without fear or compulsion of her husband. The conveyances of married women residing out of the state, of lands in the state, are valid without such acknowledgment.

No acknowledgment of the execution of any conveyance can be taken by any officer, unless he knows, or has satisfactory evidence, that the person making the acknowledgment, is the individual described in and who executed such conveyance; and in like manner, the proof of the execution of any conveyance cannot be taken by an offi-

cer, unless he is personally acquainted with the subscribing witness, or has satisfactory evidence that he is the same person who was such subscribing witness.

The officer is required, in his certificate of acknowledgment or proof, to state the residence of all witnesses examined before him, and if he omit to do so, his certificate would be void. The design of all these requirements, as it will be readily seen, is to guard against forgery.

When a conveyance has been duly acknowledged or proved, not only is it entitled to be recorded, but it may be read as evidence in court without further proof; and after it has been recorded, the record of it, or a transcript thereof duly certified, may also be read in evidence. So that if a man should loose his deed, if he had taken the precaution, as every one should do, to have it acknowledged or proved, and recorded, he could still prove his title by the record. The Revised Statutes contain special provisions for the proving and recording of conveyances when the witnesses are dead: but it is considered unnecessary to insert them in this work.

The conveyances in most common use among us, are those which are well known under the names of DEEDS and MORTGAGES. A deed for lands conveys the title absolutely; a mortgage is a security for the payment of money, and conveys the title

upon the condition that the conveyance shall become void, if the money secured by it shall be paid in the manner specified. The person by whom a mortgage is given, is called the mortgagor; the person to whom it is given, is called the mortgagee. When a mortgage is given for the purchase money of the lands mortgaged, it is advisable to state the fact in the mortgage. When a mortgage that has been recorded has been paid, it may be discharged upon the record thereof; and for this purpose, the mortgagee, or if he be dead, his executors or administrators, or if he has assigned the mortgage to another person, his assignee, must sign a certificate, which certificate must be acknowledged or proved, in the same manner as conveyances are required to be acknowledged or proved, specifying that such mortgage has been paid, or otherwise discharged, or satisfied. It is also provided by the Revised Statutes, that powers of attorney, authorizing another person to convey lands, as agent for the owner; and also contracts for the sale or purchase of lands, may be recorded, provided they are acknowledged or proved, as is required in the case of conveyances, and that when so acknowledged or proved, they may be read in evidence, in the same manner as conveyances, as may also the record thereof, or the transcript of such record, when recorded.



## CHAPTER III.

### OF ACTIONS AND THE TIMES OF COMMENCING THEM.

#### SECTION I.

##### OF THE TIME OF COMMENCING ACTIONS RELATING TO REAL PROPERTY.

All actions for the recovery of real estate, must be brought within twenty years; that is to say, no action for the recovery of real estate can be maintained, however good the title of the plaintiff may have been originally, when the land has been in the uninterrupted possession of another, claiming and holding it as his own, adversely to the title of the plaintiff, for twenty years or more. This is the general rule; but it is not always easy to apply it to particular cases as they arise. The doctrine of adverse possession has long been a perplexing subject. An attempt has, however, been made by the legislature, in the Revised Statutes, to define and settle it, as far as it is possible to do so, by legislation, which it is to be hoped, may prove successful. But the provisions for this purpose are of too technical a nature to be inserted in this work.

If, at the time the adverse possession commenced, the owner is within the age of twenty-one years; or, insane; or, in prison for some criminal offence, (unless for life;) or, a married woman; such owner is entitled to bring an action at any time within ten years after such disability shall have ceased, though more than twenty years of adverse possession may have elapsed.

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## SECTION II.

OF THE TIME OF COMMENCING ACTIONS FOR ANY DEBT OR DEMAND, OR FOR DAMAGES ONLY.

All actions for the recovery of debts, except such as are brought on a judgment or decree, of some court of record, or on a written instrument *under seal*, must be brought within six years next after the cause of action accrued. Therefore, all actions upon promissory notes and book accounts, all actions for any kind of goods or property sold, for work done, for the rent of land where there is no lease under seal, all actions upon judgments in justices courts, and the like, must be brought within six years.

All actions for trespass upon lands; all actions for taking, detaining or injuring any article of personal property: and actions for libels, or for any other



injury, except such as are specified below, are also required to be brought within six years.

Actions for assault and battery, and actions for false imprisonment, must be brought within four years.

All actions for slanderous words spoken, must be brought within two years.

All actions against sheriffs or other officers, for the *escape* of persons imprisoned on civil process, must be commenced within one year from the time of the escape. All actions against sheriffs and coroners, for *other* illegal conduct as such officers, must be brought within three years.

It is important to add, that when an action is brought to recover the balance due upon a mutual, open, running account, (such, for example, as the account between a farmer and a country merchant, where they are in the practice of mutually purchasing articles of each other upon credit,) the six years are to be computed from the last item proved in such account.

If, in any of the actions mentioned in this section, (excepting actions against sheriffs or other officers for escapes,) the person entitled to bring such action, shall, at the time the cause thereof accrued, be within the age of twenty-one years; or insane; or in prison for some criminal offence, (unless for life;) or a married woman; such person shall be at

liberty to bring such actions within the respective times in this section mentioned, after such disability is removed.

Bank notes are excepted from the rules mentioned in this section. Actions upon them may, therefore, be brought at any time. Executors and administrators are, also, so far excepted, that they have at least one year after the death of the testator or intestate, in which to sue.

If a person is out of the state when a cause of action accrues against him, the time limited for the action is to be computed from the time of his return; and, in like manner, if he goes to reside out of the state after the cause of action accrues, the time of his absence is not to be reckoned.

All suits in the name, or for the benefit, of the people, as well those mentioned in the last preceding section as in this, are to be brought in the same time as those by individuals.

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### SECTION III.

#### OF THE TIME OF COMMENCING ACTIONS FOR PENALTIES AND FORFEITURES.

All actions upon any statute for a forfeiture or penalty to the people of this state, must be commenced within two years after the offence shall have been committed.

Where the forfeiture or penalty is given wholly or in part to any person who will prosecute therefor, the action must be commenced within one year after the offence shall have been committed; and in case no action is commenced within that time by a private citizen, then it may be commenced in behalf of the people, at any time within two years thereafter, by the attorney-general, or by the district attorney of the county where the offence was committed.

All actions upon any statute, where the right of action and the benefit thereof are limited to the party aggrieved, or to such party and to the people, must be commenced within three years after the cause of action accrued.

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## SECTION IV.

### OF THE PRESUMPTION OF PAYMENT ARISING FROM THE LAPSE OF TIME.

Judgments and decrees of courts of record shall be presumed to be paid and satisfied, after the expiration of twenty years from the time of the signing and filing of such judgments and decrees. The same presumption is to be applied to sealed instruments for the payment of money: but this presumption, in both cases, may be rebutted by proof

of payment of a part of the debt, or of a written acknowledgment of it, within the twenty years.

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## SECTION V.

### OF THE TIME OF COMMENCING SUITS IN COURTS OF EQUITY.

Where there is a concurrent jurisdiction in the courts of common law, and in courts of equity, that is to say, where the cause of action is of such a nature as to admit of its being prosecuted in either of these courts, the limitation is the same in equity as at law.

Bills for relief on the ground of fraud, must be filed within six years after the discovery of the fraud.

Bills for relief in all other cases, including trusts not cognizable by courts of law, must be filed within ten years after the cause of action accrues. But, from these periods of limitation, the same deductions on account of the disabilities of infancy, &c., are to be made, as in suits at law.

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## SECTION VI.

### OF THE TIME OF COMMENCING CRIMINAL PROSE- CUTIONS.

Indictments for *murder*, may be found *at any time*, after the death of the person killed. In all

other cases, the offender must be indicted within three years after the commission of the offence; but if, before the expiration of this period, he leave this state, the period of his absence is not to be taken into account.



## CHAPTER IV.

### OF FRAUDULENT CONVEYANCES AND CONTRACTS.

1. Every conveyance of any estate, or interest in lands, made with intent to defraud prior or subsequent purchasers for a valuable consideration, of the same lands, is void as against such purchasers; except that no such conveyance shall be deemed fraudulent in favor of a subsequent purchaser who had notice thereof, at the time of his purchase, unless it shall appear that the person who took such conveyance, was privy to the fraud intended.

2. Every conveyance or assignment of any estate or interest in lands, or in any description of personal property, made with intent to defraud other persons, or to hinder or delay them in obtaining their lawful demands, and every bond or other instrument given, and judgment or decree confessed or suffered, with the like intent, are void, as against the persons so defrauded, hindered or delayed.

3. All deeds of gift, all conveyances, and all transfers or assignments, verbal or written, of any description of personal property, made in trust for

the benefit of the person making the same, are void as against the existing or subsequent creditors of such person.

4. Every conveyance or other instrument or act, declared, by the foregoing provisions, to be void as against creditors or purchasers, are also void against the heirs, personal representatives and assignees of such creditors or purchasers.

5. The foregoing provisions are not to be construed, in any manner to affect or impair the title of a purchaser, for a valuable consideration, unless it shall appear, that such purchaser had previous notice of the fraudulent intent of his immediate grantor, or of the fraud rendering void the title of such grantor.

6. All contracts concerning lands, except leases for one year or for a less period, must be in writing.

7. In certain other cases, contracts, in order to be binding, must be in writing, expressing the consideration upon which they are founded, and stating what the agreement is, with a reasonable degree of certainty, so that the essential terms of it may be understood from the writing itself; otherwise the writing will be insufficient, and the defect cannot be supplied by calling witnesses to prove what the agreement really was. Indeed, it is a rule of law of great importance, which it is deemed proper to mention in this place, that whatever



may be the nature of the contract, whether it is one which is required by law to be in writing, or not, if any part of it is in writing, the whole must be so; for where the parties contract at all in writing, it is in vain for them to alledge that a part of the agreement was omitted. Their legal rights are to be determined by the writing as it is; and, what is called *parol* evidence will not be received, either to add to, or otherwise vary its terms.

The cases above alluded to, in which agreements are required to be in writing, are the following:

1. Every agreement that, by its terms, is not to be performed within one year from the making thereof; as, for example, an agreement to deliver a certain quantity of wheat, one year and three months hence:

2. Every special promise to pay the debt, or make good the default or miscarriage of another person; as, for example, a promise to pay for goods purchased by another, if he does not; or a promise to be answerable for damages, if another person shall fail to deliver any article which he has agreed to sell and deliver; or if he shall fail to perform a piece of work that he has agreed to do: and,

3. Every agreement, promise or undertaking,

made upon consideration of marriage, except mutual promises to marry.

8. Every contract for the sale of any personal property, for the price of fifty dollars or more, is void, unless,

1. A note or memorandum in writing of such contract be made and signed by the seller: or,

2. Unless the buyer shall accept and receive the property or some part of it: or,

3. Unless the buyer shall, at the time, pay the purchase money, or some part of it.

9. But when goods are sold by public auction, if the auctioneer, at the time of the sale, enter in a sale book, a memorandum of the sale, specifying the nature and price of the property sold, the names of the parties, and the terms of the sale, this will be sufficient.

10. All sales of goods, and all assignments, by way of mortgage or security, or upon any condition whatever, of goods, at the time in the possession or under the control of the seller, are to be considered as fraudulent, and are to be held void as against the creditors of the seller or assignor, and as against subsequent purchasers in good faith, unless the sale be accompanied by an immediate delivery, and be followed by a continued change of possession, of the things sold, mortgaged or assign-

ed, or unless it shall be made to appear by the person claiming the property under such sale or assignment, that the same was made in good faith, and without any intent to defraud such creditors or purchasers.



## CHAPTER V.

### OF PROMISSORY NOTES.

There is no description of legal instruments in such common use, as promissory notes, and hardly any so conducive to the convenience of the community. There is no class of men among whom they are not used to a greater or less extent, and scarcely an individual, engaged in any kind of business, who has not occasion sometimes to resort to them.

Hence, the importance of a general acquaintance with the leading and most important rules of law, by which the legal rights and obligations of the parties to these instruments, and the holders of them, are regulated.

These rules, it is the design of this chapter, briefly to state. It is far better to learn them, at once, at an early age, than to acquire a knowledge of them, one by one, in after life, by dear bought experience.

*Of the form and requisites of promissory notes.*  
It is not necessary that a note should be written in any particular set form of words. It is enough, if it is in substance, an absolute written promise, signed by one person, to pay a sum of money, at all

events, to another person.\* If the promise is *conditional*, as, for example, to pay a certain sum of money, if another person does not pay it by a particular day, this is not a good note: and so, if the promise is to pay in any thing else than money, as, a promise to pay a certain sum in wheat, boards, cattle, or the like, such an instrument is not good as a note.

Not that such promises as these are void as between the immediate parties to them. On the contrary, if founded upon a valuable consideration, they are binding, like any other written contracts; and the fulfilment of them can be enforced by a suit. But without some evidence that they were given for a valuable consideration, there can be no recovery upon them; which is not the case with notes for the payment of money; nor are such instruments *negociable*: that is to say, they cannot, like notes, be transferred by delivery or endorsement to another person, so as to enable such other person to maintain a suit upon them in his own name.

The person who gives a note, is called the *maker*. The person to whom it is given is called the *payee*.

*What notes are negociable.*—To render a note

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\* It is not indispensably necessary that the promise should be expressed in terms; but it is enough if it is plainly implied: and upon this ground it has been decided, that what, in popular language, is usually called a *due bill*, is good, as a note.

negotiable, it must be made payable to the *order* of the payee, or else made payable to *bearer*; thus:

Three months after date, I promise to pay one hundred dollars to A. B. *or order*; or,

Three months after date, I promise to pay one hundred dollars to A. B. *or bearer*.

*How notes are negotiated or transferred.*—When a note is payable to order, the payee must write his name on the back of it, in order to transfer it to another. This is called *endorsing* it. It is then transferrable from hand to hand, by mere delivery. A person who thus puts his name upon the back of a note, is called the *endorser*. The person to whom the note is then delivered, is called the *endorsee*, or *holder*.

When a note is payable to bearer, it is transferable by mere delivery, without endorsement. Any person to whom it is transferred, is called the *bearer*.

*Interest.*—If the promise is general, to pay so much money, without specifying any time, or if it is payable on demand, the note is due immediately, and draws interest from the date, whether the words *with interest*, are inserted in the note or not.

If it is payable at a particular time, it draws interest from that time, if not then paid; but not from the date, unless the promise is to pay with interest.

The words "for value received," are not necessary in a note.

*Of the liability of endorsers, and the steps requisite to charge them as such.*—When the payee of a note endorses it, he thereby makes himself responsible for the payment of it to the endorsee or holder, on the failure of the maker to pay it.

But in order to enforce this responsibility, it is necessary that certain steps should be taken for that purpose: and,

1. A *demand* of payment must be made of the maker.

When a note is payable at some stated time after its date, and is endorsed before it is due, (which is always the case when notes are made and endorsed for the purpose of borrowing money on them at a bank, and in most other cases,) the demand must be made on the day the note falls due. This, however, is not the day specified in the note, but the *third day thereafter*; it being a long established custom, which is now become a settled rule of law, to allow three days, which are called *the three days of grace*, for the payment of a note, after the day fixed for its payment by the terms of it.

Thus, a note by which the maker promises to pay, for example, on the *first* day of May, is not in fact due until the *fourth* day of May. On the latter day, therefore, the demand is to be made; this being, as it is called, *the third day of grace*.

But if the third day of grace happens to be Sunday,



or our great national anniversary, the fourth of July, the demand must be made on the day preceding, or second day of grace: and perhaps the same rule would prevail, when the third day of grace happened to fall on a thanksgiving or fast day, designated and recommended as such by the governor of the state.

When a note is payable on demand, or, which is the same thing in effect, when the promise to pay is general, without specifying any time; and also, when a note payable on a certain future day, is endorsed *after* it is due, in each of these cases, the demand is to be made *within a reasonable time*, after it is endorsed. What shall be deemed a reasonable time, will depend on the circumstances of each particular case. The safer course is, to make the demand as soon as it can conveniently be done.

If the note is payable at a particular *place*, as, at a certain bank, or at the house of the maker, or the like, the demand must be made at the place appointed. But if the demand is made of the maker personally, at any other place, and he makes no objection on account of the place, that is sufficient.

If no place of payment is specified in the note, the demand must be made upon the maker personally, or at his house or residence. When he has no house or fixed residence, diligent inquiry

must be made after him, if he cannot otherwise be found.

If he has changed his residence, his new residence must be diligently sought out. But if he has absconded, that will, as a general rule, excuse the demand. If he has removed out of the state, after endorsing, a demand at his former place of residence will be sufficient.

If the note is not paid, upon demand, then,

2. The holder must *give notice* of the non-payment, to the endorser. This is required, in order the better to enable him to take suitable measures for the recovery of the money of the maker.

In regard to this point, the law is very strict; and endorsers are not unfrequently discharged and debts lost, by reason of ignorance or negligence in this particular.

The notice must be given or sent, not later than the *next* day to that on which the demand is made; the rule being that the holder shall be allowed one day to prepare and send the notice. If, however, the demand is made on Saturday, it is in season to send the notice on Monday. If the parties live in the same town, the notice *may* be put into the post-office, provided there is a penny-post or letter-carrier, who carries letters to the quarter of the town where the endorser resides; otherwise it must be given to him personally, or sent by a special mes-

senger to his dwelling-house, and left with some competent person to be delivered to him. If the house is shut up, by reason of temporary absence, the notice may, nevertheless, be left there, or it may be put into the post-office of the place, addressed to the endorser.

When the parties live in different towns, the notice may, in general, be sent by mail; and such is the usual practice in places where there are daily mails.

When so sent, the notice must be put into the post-office in season to be sent away in the mail that goes on the *next* day after the third day of grace, or day on which the demand is made, unless it is Sunday. If there are several daily mails sent from the place, in the direction in which the notice is to be transmitted, it should be deposited in the post-office in season to go by the *first* mail.

Formerly it was necessary that the letter should be directed to the post-office *nearest* to the endorser's residence, but, by a late statute of this state, it is declared to be sufficient, if the notice be directed to the *city* or *town* where the endorser *resided at the time of endorsing*, unless at the time of endorsing, he shall specify in writing, on the note, some particular post-office, to which he chooses to have the notice sent; in which case the notice should be directed to the post-office so specified.

There is no particular *form* of notice required. It is sufficient if it state the fact of non-payment by the maker, and that the holder looks to the endorser for payment. The notice need not necessarily be in writing, but may also be verbal.

But whether verbal or in writing, especial care should always be taken, to have some witness by whom it may be proved. For this purpose, it is advisable to employ another person to deliver it, or to enclose and put it into the post-office, who should either keep a copy of it, or be careful to remember its contents, and who should, on no account, omit to make and keep a memorandum of the *time* when the notice was delivered or sent.

It often happens that a note is endorsed by *several persons in succession*; that is to say, by others besides the payee. The endorsers are then called *first, second and third* endorsers, and so on, and they are each alike responsible to the holder, and may be rendered severally liable, like a single endorser, by being in like manner notified of the non-payment of the note by the maker.

Inasmuch, however, as the holder is not *obliged* to give notice to all the endorsers, and may, moreover sue any one of them to whom he has given notice, and compel him alone to pay; it may, and frequently does happen, that some other than the first endorser is obliged to pay the money.

But it is another important rule of law, that these several endorsers, *as among themselves*, are responsible according to the order in which they endorse. Thus, if the third endorser is compelled to pay the note, he has a right to resort to either or both of the prior endorsers. And so, if the second endorser is obliged to pay, he may sue the first endorser.

In order, however, to enable a subsequent endorser to exact payment of a prior endorser, *he* is also obliged, upon receiving notice of the non-payment of the note, *to give notice* to such prior endorser. The notice in this case, should be, that the person sending it has been notified of the non-payment of the note by the maker, and that he looks to such prior endorser. It is proper, however, to add, that the general rule here laid down, requiring a subsequent endorser to give notice to a prior endorser, is subject to this qualification, *viz.*, that if the holder has given notice, as well to the prior as to the subsequent endorser, then the subsequent endorser need not give notice. But, though it is the usual practice of holders, particularly banks, to give notice to all the endorsers, yet, unless the subsequent endorser *knows* it has been done, he should give notice himself.

A subsequent endorser has *one day*, and no more, after receiving notice himself, to give or send no-

tice to the prior endorser; and all the rules above mentioned, relative to the mode of giving notice by the holder to an endorser, are applicable to the giving of notice by one endorser to another.

## CHAPTER VI.

### OF CHECKS.

*Of their nature, uses and form.*—A check is a written order or request, drawn by a person having money in a bank, requesting the cashier of such bank to pay to the person named in such order or request, a certain sum of money therein mentioned.

Checks are instruments of great convenience and utility, and, in all places of considerable business where there are banks, are in very common use. Men, in such places, instead of keeping their money, except small sums, about their persons or in their houses, deposite it for safe keeping in a bank. It is entered or noted in the books of the bank, to the credit of the person making the deposite, and also in a small book to be kept by himself; and is drawn out by means of his *checks* at his pleasure; his book, (provided he takes care, as every man should, to keep an exact account of the checks which he draws from time to time,) always affording him the means of knowing how much money he has in bank, and also furnishing evidence against the bank, of the sums by him deposed, in case of doubt or dispute. In practice,

among men of business, checks are treated as cash; and an offer of a check in payment, is a good *tender*, unless specially objected to.

Checks are usually drawn payable to *bearer*, thus:

*Albany, November 13, 1835.*

Cashier of the New-York State Bank, pay to  
A——— B——— or bearer, one hundred and ten  
dollars and thirty cents.

C——— D———.

110 dollars, 30 cents.

Sometimes, however, especially when drawn by a person living in one place, to be sent by mail or otherwise, to a person living in another place, checks are made payable to *order*; that is to say, the word *order* is written in place of the word *bearer*, for the purpose of guarding against the consequences of the loss of the check by the way; because when thus drawn, no one except the person named in the check as payee, can legally demand or receive payment of it, until after it has come to his hands and been endorsed by him; whereas, if drawn payable to *bearer*, any one into whose possession it might fall, could, by presenting it at the bank, obtain the money upon it.

In whichever of these forms checks are drawn, they are *negotiable*; in the first case, by mere delivery, and in the second, by endorsement, in like



manner as promissory notes. So that they not only answer the purposes of money between the drawer and payee, but may also be transferred, for like purposes, by the payee to a third person, and by him to a fourth, and so on, before being finally presented at the bank for payment.

It is now proposed to state, as briefly as possible, the leading rules of law, relative to the rights and obligations of the parties to these instruments.

1. *Of the liability of the Drawer.*—When a check is given, it is considered as being received, not as an absolute payment, so as to discharge the drawer, whether the check is paid at the bank or not; but it is so far a payment as this—that the drawer cannot be resorted to for the amount of it, until after it has been demanded at the bank and payment refused. This rule of law, it will be seen, is in strict conformity with the nature of the transaction.

No one is obliged to accept of a check instead of money; but when a person consents to receive one, he thereby impliedly engages to go the bank for his money, and not to come back to the drawer for it, unless he fails in obtaining payment of his check at the bank.

If a check is not paid upon application to the bank, then the drawer is liable to pay it. This is the general rule. There, is, however, one qualifi-

cation to which it is subject. It is this: that if the check is not presented for payment within a *reasonable time* after it was given, and the drawer can show that he has been injured by the delay,—as that the bank, in the mean time, has become insolvent, whereby he has lost his funds therein,—in such case, the drawer is discharged.

As to what is to be considered a reasonable time for presentation, in order to avoid the possibility of the loss of a remedy against the drawer by reason of the failure of the bank, no definite rule, applicable to all cases, has yet been laid down. Indeed, it seems proper, that each case should depend, in this respect, to some extent, upon its own particular circumstances. According to the late decisions, however, a considerable degree of strictness is required in this particular; insomuch that it is not deemed entirely safe to recommend any general rule upon the subject less strict than this, viz: that when the check is given to a person in any place, upon a bank in the same place, he should present it for payment not later than at some time during banking hours on the next day after it was issued; and if he receives the check in a different place from that in which the bank is situated, he should *send* it for presentation, not later than the next day after he receives it, and his agent to whom it is sent,

should present it at the bank, not later than the next day after it comes to his hands.

2. *Of the liability of other parties to a check.*—When a check is drawn payable to *bearer*, it may, as we have seen, be transferred from hand to hand, by mere delivery, so as to vest the legal right to receive the money in the holder. When a check is thus transferred, the rights and obligations of the person by whom it is passed, are similar to those of the drawer, as above stated. The debt for the payment of which he transfers it, is not thereby absolutely discharged; but then, before he can be called upon to pay it, the check must have been presented at the bank and payment refused. *Then*, as a general rule, he is liable for the original debt. But, in this case, as in that of the drawer, if there has been *unreasonable delay* in demanding payment; and the refusal to pay was in consequence of such delay; either because the bank has, in the mean time, failed, or because the drawer has, in the mean time, withdrawn his money from the bank; in such case, it is apprehended, the original debt would be discharged. The time within which the holder, as between himself and the person from whom he receives the check, is bound to present it for payment, is, of course, to be computed, from the time *he receives it*, because his rights ought not to be affected by any delays which may have previously occurred.

With respect to what shall be deemed a reasonable time for presentment in this case, it is supposed that no rule less strict than that above mentioned, as applicable to the drawer, can safely be prescribed.

When the check is drawn payable to *order*, before it can be negotiated or passed off to a third person, it must be endorsed by the payee. It may then be further transferred by mere delivery, or may be further endorsed by those into whose hands it may subsequently come. The responsibility assumed by the *endorser* of a check, differs essentially from that of a person who passes a check payable to bearer. The liability of the latter extends only to the person to whom he transfers the check, and not to those to whom it may be subsequently transferred on its way to the bank. But the endorser, by putting his name upon it, warrants the payment of it by the bank to *any* subsequent holder by whom it may ultimately be presented. In order, however, to charge him as endorser, the check must be *seasonably presented* for payment, and the endorser *seasonably notified*, of the refusal of the bank to pay.

The time within which the demand ought to be made, computing from the time of the endorsement, is that above mentioned, in treating of the liability of the drawer.

THE NOTICE OF NON-PAYMENT, AND THE TIME AND MANNER OF GIVING IT, ARE THE SAME AS IN THE CASE OF AN ENDORSER OF A PROMISSORY NOTE, as stated and explained in the preceding chapter.



## CHAPTER VII.

### OF WILLS.

A *Will* is “the legal declaration of man’s intentions, which he wills to be performed after his death.”

An addition made to a will after its execution, for the purpose of explaining, altering or adding to its provisions, is called a *Codicil*. As far as it goes, it is a new and supplemental will.

*Who may dispose of property by will.*—All persons, except idiots, persons of unsound mind, married women, and infants, (that is, persons under the age of twenty-one years,) may dispose of their *real* estate, by will; and every male person of the age of eighteen years, and upwards, every female, not being a married woman, of the age of sixteen years and upwards, of sound mind and memory, and no others, may dispose of his or her *personal* property, by will.

*Subsequently acquired lands.*—Formerly, no *real* property could be devised by will, other than such as the testator had at the time of making his will. But now it is declared by the Revised Statutes that a will, in express terms, of *all* the testator’s real estate, or expressed in any other terms, denoting his *intention* to devise all his real property, shall be

construed to pass all the real estate, which he was entitled to devise *at the time of his death*.

*After-born children*.—When a testator has a child born after making his will, and dies, leaving such child unprovided for, such child is entitled to the same share or portion of the father's real and personal estate, as he or she would have been entitled to if the father had died intestate.

*Wills required to be in writing*.—Wills, whether of real or personal estate, must be in *writing*; except that soldiers when in actual service, and mariners, while at sea, may make verbal, or, as they are called, nuncupative wills, of their *personal estates*.

*Wills how to be executed*.—The Revised Statutes require that every will of real or personal property, or both, shall be executed and attested in the following manner:

1. It shall be subscribed by the testator at the end of the will:
2. Such subscription shall be made by the testator, in the presence of each of the attesting witnesses, or shall be acknowledged by him, to have been so made, to each of the subscribing witnesses:
3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed, to be his last will and testament:



4. There shall be at least *two* attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

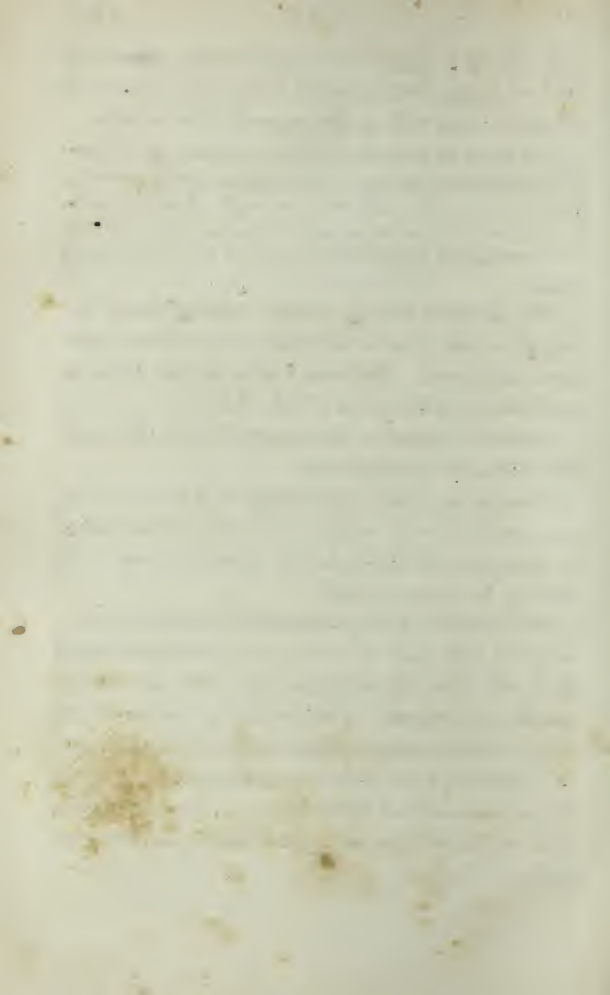
[It is not to be understood from the language of the foregoing provisions, that the testator must necessarily subscribe his name to his will, *with his own hand*. It will be sufficient if he direct another person to write his name, and then acknowledge the signature as his own, in the manner above stated.]

The Revised Statutes further require every witness to a will to write his place of residence opposite to his name. Witnesses who neglect to do so, are liable to a forfeiture of fifty dollars.

Codicils require to be executed with the same formalities as original wills.

Persons to whom any thing is devised or bequeathed in a will, ought not to act as witnesses to its execution, as the devise or legacy to them may thereby be rendered void.

*Executors.*—It is not necessary to appoint executors in a will, and, on one account, it is better not to do it, viz: that the administrators with the will annexed, as they are called, whom it would be the duty of the surrogate, in that case, to appoint, would be obliged to give sufficient security for the faithful performance of their duty as executors of the will, which in general cannot be required of executors.



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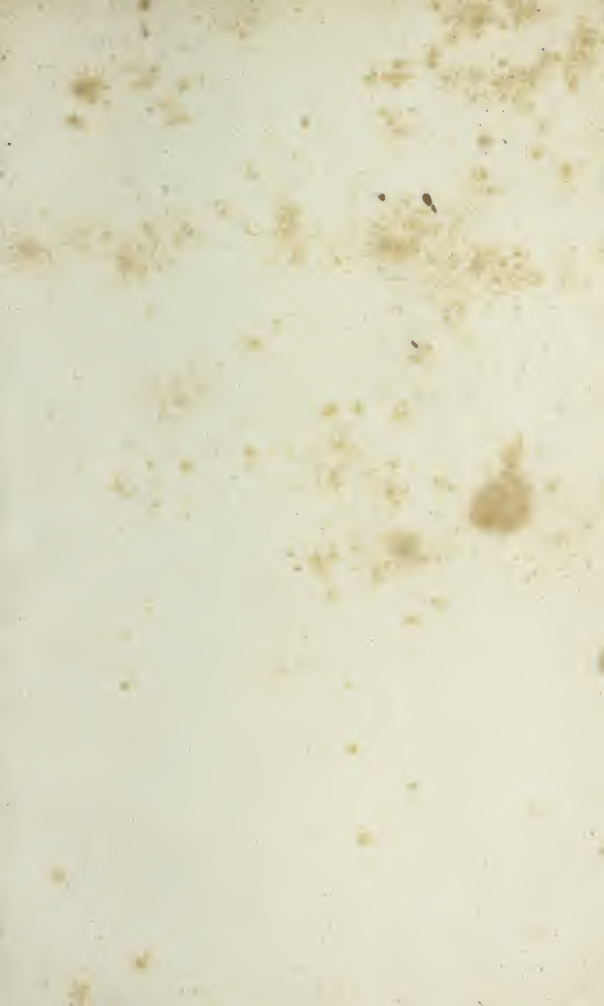
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